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DEVELOPING ETHICS PROGRAMS:
AN INDUSTRY PRIMER

Report PL803R1

Karen D. Sorber
Harry M. Tayloe

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LOGISTICS MANAGEMENT INSTITUTE
6400 Goldsboro Road
Bethesda, Maryland 20817-5886

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PREFACE

Ethics deals with the choices to be made by individuals in their relationships with others and it also deals with adherence to the rules and standards that govern the conduct of institutions and groups in our society. The distinctions between ethical choices by individuals and adherence to rules and standards governing institutional conduct are not static. They are especially dynamic in the world of Government contracting in which more and more often those choices that were once exclusively individual ethical judgments are now governed by laws and regulations.

We have prepared this primer to guide you, the chief executive officer, in developing an ethics program for your company. While the program we present focuses on compliance to law and regulation, it can also foster an environment in which honesty is an automatic choice in any instance requiring a business decision. It can bring to the surface unethical or illegal conduct that is now occurring in your company, and after that conduct is corrected, it can decrease the probability of new ethical problems arising or old ones recurring.

Your program should be uncomplicated, well publicized to your employees, and immediately responsive to allegations of impropriety. A well-developed company ethics program has several components:

- A company code consisting of a company creed and employee standards of conduct to state your ethical expectations to employees, suppliers, and others
- A system for communicating the creed and standards to the employees, a reporting mechanism such as a hotline, and an employee ethics training program
- A system of internal controls to detect improper behavior and a means for administering employee sanctions to deter such behavior in the future.

Some companies also combine ethics programs with timely "voluntary disclosure" of suspected illegal or improper activities to appropriate Government officials.

In this guide we discuss all of these components and their ramifications. Additionally, we present prototypical company creeds and standards of conduct,

suggest some effective communication methods and training programs, describe workable internal control systems, and discuss the advantages and disadvantages of voluntary disclosure. Once you've decided to act — to set up a company ethics program — you may implement any or all of the components immediately or gradually, depending upon the availability of resources and other company motivations. Of course, more gradual introduction of your program is preferable since you will be more likely to succeed in establishing a new cultural dimension in your company if the time, thought, and commitment are infused slowly rather than in a crisis-oriented atmosphere.

Ethics programs impose management challenges and risks as well as rewards, and in this guide we point out some of them. When you encourage employees to come forward to disclose infractions — to use a company hotline for example — you must be prepared to handle a variety of different situations from equal employment opportunity problems, to grievances, to allegations of criminal conduct.

Finally, the legal implications of employee relations raise difficult questions. You should consult legal counsel for guidance in dealing with matters such as wrongful dismissal of employees, defamation of character, protection of employees and constitutional rights, and a host of others.

You should consider all of the ramifications of an ethics program *before* you commit to or implement one on a wide scale. If you fail to evaluate the consequences, your company may be at risk. This guide should help you make that evaluation. It is not a legal, accounting, or regulatory text; rather, it is a concise, prescriptive, and straightforward tool to assist companies wishing to institute an ethics program.

At this time, whether you have an ethics program is your business decision, but it is a decision that you should make on the basis of an evaluation of the advantages, disadvantages, and relative costs, or perhaps cost avoidance. This primer is designed to guide you through each of the incremental decisions in developing a program.

This primer is designed to provide accurate and authoritative information on developing an ethics program. It is not intended to render professional advice nor does it represent the official policy of the Department of Defense.

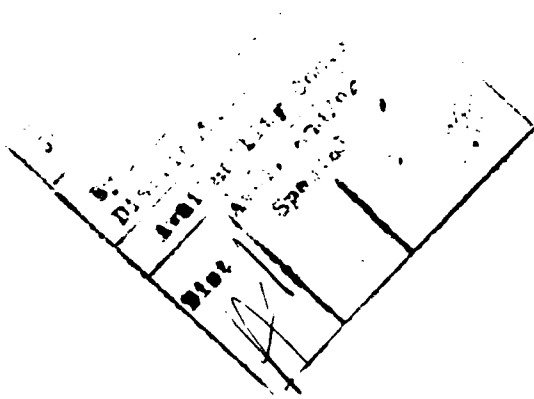
CONTENTS

	<u>Page</u>
Preface	iii
Chapter 1. Introduction	1- 1
Chapter 2. Elements of an Ethics Program	2- 1
The Code	2- 1
Company Creed	2- 2
Employee Standards of Conduct	2- 4
Communications	2-11
Distribution of the Code	2-11
Communiqués	2-12
Reporting System	2-14
Reporting Mechanisms	2-17
Summary	2-19
Training	2-20
Curriculum and Instructors	2-20
Class Size and Composition	2-21
Training Methods	2-23
Quantity of Training	2-24
Monitoring	2-25
Internal Controls	2-25
External Auditing	2-28
Internal Auditing	2-29
Relationship of Monitoring Program to Administrative and Prosecutorial Sanctions	2-32
Chapter 3. Voluntary Disclosure	3- 1
Advantages of Disclosure	3- 1
Procedures	3- 3
What Is a Voluntary Disclosure?	3- 3
Where Do You Make a Voluntary Disclosure?	3- 3
What Do You Disclose?	3- 4
When Should You Disclose?	3- 4
Legal Issues	3- 5
Employee's Constitutional Rights	3- 5
Company Rights	3- 6
Current Status	3- 7

CONTENTS (Continued)

	<u>Page</u>
Appendix A. Prototypes of Standards of Conduct	A-1 - A-10
Appendix B. Suggestions for Further Reading	B-1 - B- 7
Appendix C. Checklist for Evaluating Codes of Ethics	C-1 - C- 6
Appendix D. Matrix Summary of Offenses	D-1 - D- 9
Appendix E. Video Material Sources for Training	E-1 - E- 4

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CHAPTER 1

INTRODUCTION

Some employees, managers, and company executives believe the short-term interests of their employer may justify improper business practices. Acting out of misinformation, fear, a false sense of loyalty, or perhaps greed, they may be tempted to engage in such behavior. Improper conduct can occur across a broad spectrum of daily employee activities – time charges, material use, inspection, pricing, and relationships with vendors and customers are examples. Work undertaken for the Government is especially open to such behavior because in addition to the basic ethics of our society, company staff members must comply with a vast number of complex laws, regulations, and rules. Understanding and staying current with these regulations and laws can be difficult. Further, some practices that merely involved ethical judgments yesterday may involve matters of law today.

The sheer number of reports of alleged fraud and mismanagement by Defense contractors has created a public perception that improper behavior is the norm among them. The Government has reacted to that perception by stepping up its efforts to detect and punish improper behavior. It has imposed more rules and regulations and accompanied them with more investigations, audits, oversight, inspections, and compliance reporting. Many believe that all of that Government activity has, in turn, caused disruption to the workplace, increased the cost of doing business, and harmed DoD-industry relations. The Government and its contractors must find a procedure to overcome these problems.

Self-initiated company ethics programs are directed at communicating a company's expectations to its employees, management staff, suppliers, and others. Those expectations are to conduct all business in an ethical and legal manner, which aids in Government relations and projects a positive public image. Company ethics programs, in some cases, provide for company-conducted investigations of suspected wrongdoing, often resulting in correction of management and control defects and may lead to more favorable treatment when Government contracting rules and

regulations are violated. DoD regulations now recognize company ethics programs and self-enforcement as important adjuncts to Government enforcement.

To be effective, company ethics programs should consist of the following elements:

- A written code of business ethics and conduct to serve as the standard against which employees, supervisors, and executives are judged. The code should supplement and expand upon laws and regulations governing Government acquisition, describe the expected ethical behavior of employees, and include a description of company sanctions that will be imposed for failure to adhere to the standards.
- A means of communicating and reinforcing the code among all company employees. The company communications plan should include mechanisms, such as hotlines or ombudsmen, through which the employees may report suspected wrongdoing without fear of retribution.
- A training program that explains the company's code to current employees, ensures that new employees are properly indoctrinated, and periodically retrains all employees in the company's standards.
- A monitoring procedure through which the company can assess the program to ensure that it is functioning properly. This monitoring may include use of outside audits, the imposition of internal controls, and internal auditing.

One other element has been added to many companies' ethics programs to effect self-governance:

- The adoption of procedures for voluntary disclosure of actions that violate procurement laws or regulations to the appropriate Government entity.

Voluntary disclosure procedures are the bridge between (1) the company's internal ethics program with its standards of conduct and systems of detection and sanction and (2) the Government's acceptance of company self-governance.

In theory, a company can establish an ethics program without adopting voluntary disclosure procedures. However, the mere existence of an ethics code indicates that a company desires to exist in an ethical environment, and disclosure of wrongdoing is part of such an environment. Furthermore, companies that do not disclose may suffer greater penalties if the Government independently discovers some wrongdoing.

This primer describes the generally accepted elements of an ethics program. It can be used as a checklist for reviewing an existing ethics program or as a primer for initiating one. It focuses on developing and communicating company creeds and employee standards of conduct, establishing hotlines and designating ombudsmen, instituting training, establishing internal controls, and disclosing violations voluntarily. It is separated into three chapters. This chapter provides some general background. In Chapter 2 we present information on developing a company creed and employee standards of conduct, communicating and reinforcing the code and internally reporting violations, developing training programs, and developing an internal monitoring program. In our treatment of voluntary disclosure (Chapter 3), we define "voluntary"; discuss where, what, and when to disclose; and describe such relevant issues as employee and company rights.

Five appendices present detailed information. Appendix A presents prototype standards of conduct; Appendix B is an annotated reading list; Appendix C is a checklist of questions whose answers will help you assess your ethics program; Appendix D is a list of fraud offenses; and Appendix E is a listing of video material sources for ethics program training.

One further word about Appendix B. While this guide provides an overview of the ingredients of an ethics program, describes some implementation techniques, and identifies some outstanding issues you must deal with, it does not treat all in detail. To provide that detail, we have included an annotated list of references for further reading. Those references include studies and guidelines prepared by Federal agencies, private law firms, the American Bar Association, the Washington Legal Foundation, and others.

CHAPTER 2

ELEMENTS OF AN ETHICS PROGRAM

The DoD acquisition process is highly complex and constantly changing. Continued allegations of sweeping white collar crime in the Defense community in recent years have significantly eroded public confidence in the process. Defense auditors have assumed a much more significant role in detecting fraud, and the Inspector Generals (IGs) have increased their focus on Defense contract fraud. In response to this pressure, many companies in the Defense industry are taking an active posture and developing and communicating to employees standards of conduct. Employees prefer to work in an environment in which they are given a clear indication of the company policies and ethical standards they are expected to follow, an understanding of procurement regulations, and a mechanism for clarifying ambiguities and reporting misconduct.

This chapter presents, in some detail, the principles and procedures found in many company ethics programs. Such programs utilize codes of conduct, company communications, employee training programs, and compliance monitoring techniques. You may find it useful to review the checklist presented as Appendix C to assess the current status of ethics practices at your company before establishing a formal program. You should periodically (say, once a year) review the checklist after establishing your ethics program to ensure that your program is being maintained.

THE CODE

Two major elements comprise what we refer to as *the Code*. The first is the company creed, a statement of values that may be provided to employees, customers, suppliers, stockholders, and the public at large. The second is the employee standards of conduct providing guidelines, rules, duties, and compliance responsibilities of company employees at all levels. We examine each of these elements in detail.

Company Creed

A company creed is usually unique to each company; it reflects the company's products, operations, and characteristics and typically includes a commitment to specific values and responsibilities made by the company and its employees to customers, shareholders, and suppliers.

The contents of the creed describe management's commitments to its employees, suppliers, and the community; the quality of its products and services; its business responsibilities to the shareholders; and its responsibilities to other constituencies. The creed may also specify the first priority loyalty (for example, to customers). We cannot overemphasize the importance of giving careful consideration to the creed's content.

Management-Employee Involvement

Your company creed should be developed with input from company management and employees alike. Joint management-employee development demonstrates that both top management and employees are committed to its contents. Joint development also gives management an opportunity to gauge the ethical characteristics of the employees so that it can consider those characteristics in preparing its creed.

Many companies involve a cross-section of their employees in developing a creed. By doing so, they create an employee commitment and at the same time provide a feedback mechanism by which management is kept informed of high-risk areas of concern that should be treated in the creed. For example, behavior involving quality, safety, or environmental protection issues may not yet have evolved into questionable conduct but may be affecting sales or employee morale. Employees who are developing a creed can make management aware of such evolving issues. Moreover, examples of issues provided by employees in the creed development can be used as case studies in a company training program. Involving them in its development reassures the employees that they are trusted and that their views are valued.

Creed Tone and Commitment

A creed's tone must be forceful and positive, the company's commitment to the ethical behavior it specifies must be unquestioned, and the company's presumption

of employee integrity must be clear to create a positive atmosphere. Once the creed is established, it must be continually reinforced by top management to ensure that it is effective in its primary purpose — to improve ethical decision making by company employees. Executive behavior must be consistent with the creed in every respect if the creed is to have credibility with other employees, vendors, and the community at large. Commitment starts at the top and cascades through the company with reinforced commitment.

Examples of Company Creeds

The following is an excerpt from a company creed prepared by General Dynamics:

To our customers we will be attentive and strive to maximize the value, quality and operability of General Dynamics products and services within the requirements of our contracts.

To our suppliers we will be the best customer we can be and will emphasize both fair competition and long-lasting relationships.

To each other, as employees, we will treat one another fairly and with the dignity and respect due all human beings.

To our shareholders we will pursue our growth and earnings objectives while always keeping ethical standards at the forefront of our activities.

To the many communities of which we are a member, and to society as a whole, we will act as responsible and responsive corporate citizens and in a moral ethical and beneficial manner.

The following excerpt from the Johnson and Johnson creed are provided as another example:

We believe our first responsibility is to the doctors, nurses and patients, to mothers and all others who use our products and services.

In meeting their needs everything we do must be of high quality.

We must constantly strive to reduce our costs in order to maintain reasonable prices.

Customers' orders must be serviced promptly and accurately.

Our suppliers and distributors must have an opportunity to make a fair profit.

We are responsible to our employees, the men and women who work with us throughout the world.

Compensation must be fair and adequate, and working conditions clean, orderly and safe.

Employees must feel free to make suggestions and complaints.

There must be equal opportunity for employment, development and advancement for those qualified.

We must provide competent management, and their actions must be just and ethical.

We are responsible to the communities in which we live and work and to the world community as well.

We must encourage civic improvements and better health and education.

Our final responsibility is to our stockholders.

Business must make a sound profit.

When we operate according to these principles the stockholders should realize a fair return.

Even though one of these creeds was taken from a totally commercial corporation (Johnson and Johnson) and one from a predominantly Defense contractor (General Dynamics), they both contain similar characteristics. They both describe the relationships the company expects to enjoy with customers, suppliers, employees, stockholders, and communities. It is from the company creed that the individual standards of conduct are derived.

Employee Standards of Conduct

This section of the primer identifies the purpose and guiding principles to be considered in developing your individual employee's standards of conduct and the sanctions to be imposed for violating them. In Appendix A we present prototype standards that can serve as a basis for tailoring to your company needs.

A word about employee conduct. For the most part, employees will practice the highest standards of conduct as long as they know what those standards are. Thus, you must develop standards of conduct and communicate them to your employees. Another way to prevent unethical conduct by employees is to employ persons with proven ethical performance. You can take a large step toward doing that by performing a thorough background review (consistent with any limitations imposed by state law) prior to hiring a prospective employee. You should carefully check

references provided by job applicants to uncover past instances of unethical behavior.

Finally, you must be certain that upper level management does not consciously or inadvertently impose pressure that encourages an employee to violate the employee standards of conduct. As an example, a company executive may exert pressure on employees to meet an unreasonable schedule or to complete a job at an unreasonable cost while knowing full well that neither can be done without violating the company's standards of conduct. Prevention of unethical activity begins at the top – employees must see consistency among corporate rhetoric and senior management techniques for accomplishing the goals of the organization. Furthermore, in preparing employee performance appraisals, supervisors should consider adherence to the company ethics program. Raising the sensitivity of employees to ethical considerations is ultimately dependent upon assuring that your organization is consistent in what it says and what it does.

Purpose

Company standards offer employees guidance in making decisions. Their goal is to ensure that employees have some criteria for determining whether their conduct is ethical and conforms to current procurement laws and regulations. Some unethical acts may be committed by basically honest people who are misguided or uninformed, and clear company standards certainly help them. Other misconduct, however, is deliberate and self-serving, and employees are fully aware of its impropriety. A well-developed set of company standards of conduct informs employees of their expected behavior and the sanctions that can be imposed for deviations from that behavior. Such standards serve as a reference to help employees resist temptations to engage in expedient but unethical behavior.

Guiding Principles

In drafting standards for employees, you should strike a balance between providing a cookbook of "dos and don'ts" and a tool to guide employees in making proper decisions. Although a checklist standard may be inevitable for large organizations, employees should be taught how to make judgments because they are virtually certain to be faced with unanticipated problems. Striking this balance and strengthening it through training programs helps to minimize employee misconduct.

In drafting standards, you should review existing company policies and procedures. Those policies may already address many aspects normally included in standards of conduct, such as time charging or personnel practices. You should then ensure that existing company policies are up-to-date and not in conflict with any newly established standards.

Sanctions

The employer/employee relationship is governed by state law and, in some cases, collective bargaining agreements. Accordingly, company legal counsel should be consulted prior to instituting any of the procedures discussed in this subsection.

Relationship of Improper Practice to Penalty. The spectrum of possible company sanctions varies in increasing degree of severity from appraisal comments, reprimand, probation, denied promotion, demotion, suspension, to dismissal. The information summarized in Table 2-1 is taken from a 1977 study by the Olsson Center for the Study of Applied Ethics of the Colgate Darden Graduate School of Business Administration of the University of Virginia. It shows different types of violations by personnel in the *Fortune* 700 industrial companies and their corresponding sanctions. Although it is somewhat dated, it gives a general indication of how business treats ethics violations.

You should tailor your company's sanctions to the individual circumstances and degree of impropriety, and you should consider the impact the violation has on your company. You should then develop your own company policies on administering the sanctions. Because circumstances vary with each violation, you should not necessarily publish prescribed sanctions for specific violations. However, you must take great care to apply all sanctions consistently.

Administration of Sanctions. How you determine what sanctions are appropriate and how you administer their imposition play a major role in the success of your program. Here we describe administrative procedures for determining the need for sanctions and procedures for improving them.

TABLE 2-1
VIOLATIONS AND RESULTING PENALTIES
Fortune 700 industrial companies

	Reprimand	Promotion denied	Demotion	Dismissal
Offering a bribe	9%	3%	3%	85%
Concealing knowledge of an offered bribe	37	9	9	45
Accepting a bribe	3		3	94
Concealing knowledge of an accepted bribe	26	10	10	54
Giving gifts of substantial value	38	3	9	50
Accepting gifts of substantial value	33	8	8	51
Participating in or making decisions that could result in personal gain	25	8	10	57
Failure to disqualify oneself where a conflict of interest exists	37	9	6	48
Personal conduct injurious to the company's reputation	33	11	11	45
Illegal political contributions	11	4		85
Price fixing	4			96
Other illegal actions	14	4	7	75
Profiting directly or indirectly from "insider" information	26	8	5	61
Falsification of company records	6	3	3	88
Other unethical conduct	36%	8%	6%	50%

Source: *Standards of Conduct in Business*. The Center for the Study of Applied Ethics. The Colgate Darden Graduate School of Business Administration, University of Virginia, April 1977. The overall study was based on a survey of 700 top *Fortune* industrial companies, 300 top *Fortune* nonindustrials, and 375 graduates of an executive training program at the Darden School. The 19.7 percent overall response rate is considered by the evaluators to be statistically significant. Although this table presents only the information from industrial companies, the results from nonindustrials were similar. Reprinted with permission.

You should establish procedures for investigating any alleged improprieties and for determining sanctions, and you should make sure they are understood and implemented by management and the personnel officials. You may have a designated ombudsman, company legal counsel, or personnel administrator evaluate the circumstances surrounding an alleged violation. As part of that evaluation, the following facts normally need to be ascertained:

- Was the employee properly notified of the company standards of conduct?
- Was sufficient training provided to the employee?
- Was the employee's conduct consistent with company policies and procedures?
- Did the employee understand that sanctions could be administered if violations occurred?

A fair and thorough investigation will determine whether substantial evidence indicates that the employee committed the alleged violation and appropriate sanctions are being applied. Insofar as sanctions are concerned, you should be sure to apply them under the following three conditions. First, sanctions should be levied in proportion to the violation. Second, nonsupervisory employees should be treated similarly to their superiors or senior management and no exceptions made for management personnel just because they may be valuable to the company. Such evenhanded application of sanctions helps to reinforce their credibility among employees. Third, findings and recommended sanctions should always be reviewed at a level higher than the investigating authority. For example, if the ombudsman, who reports to the company president, conducts the review, the president should review the findings. Alternatively, findings could be reviewed at a management level higher than that of the violating employee.

Dismissal is the ultimate company sanction and, in any event, should be imposed with great care. In addition, employees are free to initiate wrongful dismissal suits. A substantial asset in defense of such suits is the existence of well-developed personnel procedures for conducting performance evaluations, administering discipline, and terminating employees. Koven and Smith's book *Just Cause: The Seven Tests*, as reviewed in the periodical, *Human Resources*

Management,¹ indicates a checklist (see Table 2-2) in the form of questions that can help the personnel department and managers avoid wrongful terminations and potential legal action. Company legal counsel should be consulted to determine other factors that may be applicable to a particular situation under appropriate state law.

TABLE 2-2
TERMINATION-FOR-CAUSE CHECKLIST

Element	Questions
Notice	Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's misconduct?
Reasonable rules and orders	Was the employer's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the employer's business, and (b) the performance that the employer might properly expect of the employee?
Investigation	Did the employer, before administering the discipline to the employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
Fair investigation	Was the employer's investigation conducted fairly and objectively?
Proof	In the investigation, did the company "judge" obtain substantial evidence or proof that the employee was guilty as charged?
Equal treatment	Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?
Penalty	Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's <i>proven</i> offense, and (b) the record of the employee in his service with the employer?

Source: Koven, Adolph M. and Susan L. Smith. *Just Cause: The Seven Tests*. Coloracre Publications, P.O. Box 529, San Francisco, Calif. 94101. May 1985.

¹*Human Resources Management. Ideas and Trends in Personnel.* Commerce Clearing House. Issue 114. p. 56. 2 Apr 1986.

Contents of Employee Standards of Conduct

The emphasis in the employee standards of conduct should be tailored to the individual business and be based on the company creed. For example, if a company does a significant amount of foreign business, the Foreign Corrupt Practices Act might be treated in detail. A company that has a mix of fixed-priced and cost-reimbursable type contracts may devote particular attention to time charge practices. The first step in determining what standards are to be treated is to identify your company's risk areas. Many such areas are self-evident, and others may be identified by employees, the company accountant or legal counsel, the external or internal auditor, the director of administration, and the personnel manager. Pertinent fraud laws may be reviewed to ensure that standards of conduct are responsive to applicable laws. Appendix D provides a brief description of Federal fraud statutes that are potentially germane to a Government contractor. They include corruption offenses (e.g., bribery, kickbacks); espionage offenses (e.g., compromise of classified material); conspiracy offenses (e.g., racketeering); and other fraud offenses (e.g., false claims).

The standards should describe the legal and ethical conduct expected of the company employees; they should clearly define conduct that the company regards as unethical. Employees require more guidance to avoid unethical practices than to avoid activities that are clearly illegal. Examples of this may be in the areas of safety practices beyond the requirements of the Occupational Safety and Health Act (OSHA), improved quality to satisfy customers, protection of the environment, and management or leadership philosophies.

Prototype Standards of Conduct

In Appendix A, we present prototype standards of conduct that you may wish to use as a guide when preparing your own code of conduct. They are based on a review of a large number of actual company standards of conduct. Consider those prototypes, and decide whether you can tailor them to meet your company procedures, individual needs, and high-risk areas. The prototype standards in Appendix A cover the following topics:

- Product quality, safety, and inspection
- Sales and marketing

- Competition, negotiations, and finance
- Company relationship with others
- Employment practices
- Maintaining positions of trust.

Appendix A also presents prototype coverage for reporting violations and imposing disciplinary actions; you should include similar sections in your employee standards of conduct.

COMMUNICATIONS

Once a creed and employee standards of conduct have been developed, they need to be effectively communicated so that employees thoroughly understand them. Management should reinforce the ethical principles in both written and oral communications. Employees must understand their roles in enforcement, know the procedure to report violations, and be convinced they will suffer no retribution for reporting violations. This section details each of these objectives with subsections on distribution of the code, communiqués, reporting system, and reporting mechanisms.

Distribution of the Code

The code (with a creed and employee standards of conduct) should be initially distributed to all employees. Consistent with any limitations established by a collective bargaining agreement or state law, new employees should be required to participate in the ethics program as a condition of their employment, and the code can be given to them at time of employment. It should be redistributed to all employees after any revision. The actual documents can be distributed through any of the methods the company uses to reach its employees. An effective way to be sure that all employees receive copies is to have the company supervisors distribute them and at the same time answer any questions. Such a procedure requires that the supervisors have a strong conceptual understanding of the contents of the code.

Another way to distribute the code is to have the chairman of the board or the president mail the documents to the employees' homes. This latter method has the advantage of ensuring that timely distribution is made but affords little control over the atmosphere in which it is received.

No matter how the code is distributed, each employee should be requested to sign an acknowledgment that he/she has received and understands it. The employee's signature should verify that he/she

- Has read the code
- Understands the code
- Affirms or pledges to abide by the code
- Has had an opportunity to provide comments.

Although acknowledgment from all employees is desirable and a good faith effort to get such coverage is important, not all employees will sign an acknowledgment. Collective bargaining agreements may conflict with administration of sanctions for violations of the code, and, therefore, union members may resist pledging adherence to the standards. Supervisors of employees declining to acknowledge receipt of the code should annotate on the card that the code was provided to the employee and state the reason for the employee's refusal to sign.

It is also important that you distribute your ethics code to your vendors, subcontractors, and consultants. While they are vital to your business success, they are in a position to misrepresent to others the ethical standards of your company. You must therefore communicate to them your expectations for their behavior and where you find it necessary, make adherence to those expectations a condition of doing business. You should also ensure, of course, that specific obligations imposed by your DoD contracts are passed on to your subcontractors where appropriate. While your suppliers may accept your code without hesitation, some may consider it to be overtly intrusive. In that case, you might consider issuing a policy letter to all suppliers indicating the advisability and benefits of developing their own code of ethics for use within their company and provide you with a copy of it. With such an arrangement you will at least have a tool to make a risk assessment of your business relationships.

Communiqués

It is crucial that management often remind employees of the importance of the ethics program and report to them on ethics implementation and monitoring. Such communication will emphasize management's commitment and provide the impetus for the employees' continued development. Table 2-3 lists some examples of

communication techniques as reported in the 1987 annual report from the *Defense Industry Initiatives on Business Ethics and Conduct*. (The Defense Industry Initiatives (DII) is a coalition of Defense contractors who, responding to Packard Commission recommendations, committed to promulgate and enforce codes of ethics and provide public accountability.) You should adopt an approach best suited to your company's needs. Remember, your objective is to communicate on a regular basis management's commitment to ethics.

TABLE 2-3

ETHICS PROGRAM COMMUNICATION TECHNIQUES

Written communications	<ul style="list-style-type: none"> Articles in company newspapers, newsletters, and magazines Letters and memos to employees from senior management Bulletins and notices addressing ethics or compliance matters Messages in pay envelopes or on pay stubs Periodic redistribution of the code of ethics Distribution of ethics-related books and pamphlets other than the code Periodic recertifications that employee has no conflicts of interest Inclusion of ethics-related material in annual reports Policies and procedures on business ethics and conduct Internal circulation of externally published articles on business ethics
One-on-one communication	<ul style="list-style-type: none"> Communication from supervisors Employee conversations with ethics office staff and corporate counsel
Group meetings	<ul style="list-style-type: none"> Departmental, divisional, or staff meetings Mass meetings Briefing sessions Speeches Counseling sessions Question-and-answer sessions
Visual aids	<ul style="list-style-type: none"> Video tapes Posters Badge extenders Vu-graphs and slides
Other modes	<ul style="list-style-type: none"> Employee opinion surveys Review of customers' ethics rules Telephone news line including items about ethics Electronic access to code of ethics Electronic mail Employee input in biannual reviews of the corporate creed Easy accessibility of form for reporting violations

Source: *Defense Industry Initiatives on Business Ethics and Conduct*. Public Accountability. 1987 Annual Report to the Public and the Defense Industry. Prepared by Ethics Resource Center, Inc., Washington, D.C. Jan 1988.

Reporting System

Most ethics programs include an internal mechanism that employees can use to report perceived violations. Otherwise, conscientious employees may have no choice but to utilize other avenues to report their suspicions of wrongdoing. An employee's use of an outside channel would, by definition, be inconsistent with the purpose of self-governance. The most obvious outside channels for the employee to use are the DoD hotline number and the print or electronic media.

Another action an employee could take would be to file a lawsuit under the 1986 Qui Tam amendments of the False Claims Act. (Qui Tam actions are law suits brought by private citizens against companies on behalf of the United States, whereby the citizens may share in any monetary recovery.) If one of your employees files a Qui Tam suit, the Department of Justice could join the suit, and your employee could be awarded up to 15–25 percent of any recovery plus reasonable attorney's fees. If the Government does not join in the suit, your employee may be awarded 25–30 percent of the recovery. An employee who feels that the internal system is effective or credible is less likely to resort to this alternative.

The possibility that an employee might use the DoD hotline or the media to report an ethics violation is always present. In those cases, employees also may be more inclined to use the company procedure if they believe it is satisfactory. You can achieve the ultimate objective of self-governance only if your internal reporting mechanism is effective and is used by employees.

Responding to Inquiries

Responses to allegations of ethics violations should be timely, confidential, and anonymous; employees should know they will be protected. In this subsection we describe some possible procedures for responding to employees inquiries and allegations.

Employees should be encouraged to resolve ethical conflicts with their immediate superior as the first recourse if that is possible. That resolution may only be feasible if the employee trusts the supervisor to resolve the problem and if the issue does not overtly involve the supervisor's conduct. Therefore, alternative reporting procedures (e.g., hotlines or ombudsmen) should be available for every employee.

Some companies have found in practice that only from 5–15 percent of inquiries require an investigation or involve potential violations of law. Most of the inquiries made by employees are to clarify some aspects of the program or to request advice and consultation. As many as a third of the calls involve personnel matters that can be handled as employee relations issues. Although not designed for that purpose, employee inquiries give management an opportunity to informally communicate with employees and learn of organizational shortcomings.

The actual number of inquiries you will have to respond to is difficult to predict. The volume will depend upon many factors including the education level of your employees, the firm's overall relationship with the Government, the stability of the work force, the degree of effective internal controls, the mix of Government and commercial business, and the overall level of commitment of senior management to your ethics program. Some factors will increase the volume, others will decrease it.

When a potential ethics program violation is uncovered, you should turn to legal, accounting, or senior executive personnel to conduct an appropriate investigation and resolve any problems uncovered. Such personnel may also assist in deciding whether to voluntarily disclose violations to the Government. (The criteria for voluntary disclosure are covered in the next chapter.)

Timeliness

Timely responses to reported violations are critical to program success. Employees will be convinced that their reports are being taken seriously if management responds to them promptly, and they will be more likely to use your internal reporting systems. You should keep a record of referrals indicating the date received, date resolved, and action officer for periodic monitoring, and you should assign the highest priority to safeguarding those records, consistent with the requirements of state law.

Confidentiality

Perhaps the greatest threat to the credibility of an ethics program is a breach or compromise of confidentiality subject to the need or desire of the company to disclose information to the Government in conjunction with a related investigation. Employees who report ethics violations must feel they will be protected from retribution by supervisors and peers. Your procedures must ensure confidentiality

subject to the need or desire of the company to disclose information to the Government in conjunction with a related investigation. Those procedures may include standardizing means for logging telephone calls, assigning a code, securing protection of that information, and permitting only a few select individuals access to it. Whether Government investigators have access to all or only some documents created during the conduct of a company investigation is open to debate. Consequently, we recommend that employees be informed that information they provide may have to be released to Federal investigators at a later time.

"Whistleblower" Protection

Confidentiality is vital to the success of your ethics program. However, should the source of a fraud referral be identified, the company must take all reasonable steps to ensure that neither superiors nor peers take any action against the source. Examples of such action might include unwarranted dismissal, unsatisfactory job evaluations, unwarrantedly low pay raises, or assignment to poor working conditions. Federal statutes prohibit retribution against whistleblowers. Transfer of the employee to an equal or better position with the employee's consent or the transfer of a retaliating supervisor should be considered if retaliation arises that cannot be controlled. If poor working conditions are imposed on the employee or if the employee is given an undesirable transfer, those actions may be tantamount to discharge and can expose the firm to a "wrongful discharge" suit.

The company president might send a letter to the exposed whistleblower declaring the company's commitment to fair treatment and perhaps assign an unbiased counselor to the whistleblower to discuss concerns should they arise. The president should also remind all levels of management of their responsibility under Federal law to protect the individual from punishment and harassment.

Proper enforcement of employee protection policies is the right thing to do, is based in law, and will enhance the commitment of employees to your ethics program. Moreover, Government evaluators may consider employee protection policies as a factor when making decisions on suspension or debarment. This and other attributes of your ethics program may help you avoid, or mitigate the severity of, suspension or debarment from Government contracting, or prosecution.

Reporting Mechanisms

Companies use various methods to implement an internal reporting system. They range from informal methods to dedicated and highly organized approaches. The executive open-door method, the post office box, the ombudsman, and the telephone line are described here.

Open-Door Method

Some company presidents or chairmen of the board practice open-door policies as methods of employees' reporting alleged violations of the ethics code. This policy has the advantage of getting the issue to the top quickly; however, it is not always effective as the only reporting method in a company since employees may be inhibited in reporting violations face-to-face to a top executive.

Post Office Box

A second method for reporting alleged violations is the use of a post office box. It is an inexpensive method and has an advantage over the hotline if your company is very small and voices are easily recognized. However, you may have difficulty responding to the reporting employee when the written report is anonymous.

Ombudsman or Ethics Director

Another reporting mechanism is to name a trusted senior manager – an ombudsman – to receive all violation reports. Typically the same individual is the ombudsman, or ethics director, and the telephone line contact. Ombudsman duties and responsibilities may typically include the following:

- Update and distribute company code
- Ensure established company policies, practices, and procedures are consistent with employee standards of conduct
- Conduct or coordinate awareness training and counseling
- Function as a telephone line monitor
- Recommend revisions to policies and sanctions
- Conduct investigations and recommend disposition of cases.

Telephone Line

Most reports of misconduct or illegalities are initially telephoned over an internal company "hotline" specially set up for that purpose and widely publicized throughout the company. In this section we first point out several areas for your consideration in setting up a hotline and then recommend a procedure for doing so.

How Do You Advertise the Hotline? Companies report a wide variance in their hotline inquiries; some involve a high percentage of matters substantial enough to warrant investigation, while one company reports that only about 10 percent of its employees' inquiries have merit. The difference appears to be the content of the posters advertising the hotline. (A company that limits the calls to reports of company ethics violations and illegal actions has fewer calls but the ones it receives may be more substantial.) You must carefully compose the posters advertising the hotline.

Who Answers the Telephone? As pointed out earlier, the ombudsman, or ethics director, is the most obvious person to answer the hotline. That person usually is a responsible senior staff member who is trustworthy and discreet and sensitive to the legal implications of all inquiries. For calls that may come during the absence of the ombudsman or telephone monitor, you might consider installing an answering machine. A caller who wishes anonymity might be asked to call back at some specific times, while others can leave their names for return calls. Again, we want to stress that you must give prime consideration to confidentiality – and your employees must know that.

How Do You Respond to Inquiries? Most ombudsmen prefer to dispose of an inquiry immediately, that is, while the caller is on the line. In a large company, that immediate response is important for it saves two additional calls (one to determine the answer and one to reach the original caller) and does not require the callers to identify themselves. In any event, all inquiries should be acted upon and their disposition reported to the initiator as soon as possible.

What Information Do You Maintain? You should keep records of all calls from the first ring of the bell until final disposition. You must first keep all information required by state or local law (e.g., the geographic area of the call in California). Other information includes time of call (hour, date); nature of the inquiry; where it is

referred; and how and when it is disposed. Such information can be used as a management tool in revising and perfecting its code of conduct.

What Should You Do? Many companies establish a hotline (you might consider calling it an "integrity line" or a "house phone" to distinguish it from the plethora of hotlines that have arisen to take care of security, personnel, etc.) and advertise it throughout the company. (If your company has several remote locations, you should consider using an 800 number.) Posters may be used to solicit calls for violations of any aspect of the company creed or standards of conduct and certainly for any illegal act. A senior-level employee is often designated as ombudsman and assigned the responsibility of answering the hotline and dealing with all inquiries. The ombudsman is provided with a telephone answering machine for use during absences and a recorded message that tells when the ombudsman will be available to those who do not wish to leave their names and provides space for a message for those who do not wish anonymity.

The ombudsman ensures the confidentiality of all calls by installing such safeguards as combination safes for files. The ombudsman often keeps records of all inquiries including the time and date the initial call is received, the name of the caller if available or a special code number if the caller wishes to remain anonymous, and all details of the disposition of the inquiry. The ombudsman makes a diligent effort to resolve the inquiry as soon as possible and, in any event, reports progress to the caller periodically. An anonymous caller may use a special code when calling to determine progress.

In summary, for a hotline to be effective, the ombudsman must be trusted, must maintain confidentiality (subject to possible disclosure to the Government in conjunction with a related investigation), and must resolve all inquiries quickly.

Summary

Employee reports of potential violations of public law or regulations should be responded to promptly and confidentially, and the employee making the report must have his/her protection ensured. Promptness and confidentiality in reporting a violation will not only re-enforce management's commitment to a successful program but may also provide evidence of contractor responsibility for the Government to consider in suspension or debarment proceedings.

TRAINING

A good employee training program consists of thorough instruction in contract compliance and a full orientation on the company's code of ethics. The standards of conduct and the company creed are a natural introduction for indoctrinating employees on their expected ethical behavior; the standards and creed, however, are not intended to be a substitute for training in contract compliance.

Contract compliance training is a mechanism through which you can educate your employees about important aspects of your ethics program and reinforce management's commitment to it. The objective of the training program is to obtain individual employees' adherence to your ethics program and their compliance with Government regulations and laws and to inform them of company commitment to sanctions for noncompliance. That program can take many forms and styles and lasts various lengths of time, but the common thread is that it should improve the ability of employees to make or obtain advice for making ethical judgments. The Government considers the adequacy of employee training as a mitigating factor in suspension or debarment decisions. Thus, it is important to maintain accurate records of training attendance, including having each employee sign attendance cards.

Curriculum and Instructors

In establishing a company program for ethics training, your most important action is selection of curriculum and instructors. You have several choices: you may hire outside professionals to develop the curriculum and instruct the employees, you may select in-house trainers and develop your own curriculum, or you may use some combination of these approaches. The outside and in-house approaches have advantages and disadvantages.

An advantage in using an outside firm is that you may have greater assurance that qualified instructors will be used. Against that advantage are the following disadvantages:

- Employees sometimes perceive training conducted by outside firms as one-time instruction on a subject that has less than complete management commitment.

- Programs developed by outside professionals may be less tailored to your individual needs than a more focused in-house effort.

The use of in-house instructors to develop the training curriculum and train employees has two disadvantages:

- The likelihood of having high-quality instructors may be less than it would be if outside instructors were used.
- Curriculum development will require time and effort away from the instructor or developer's primary job.

In spite of those disadvantages, many companies still take the in-house route and use mid-level and senior-level managers as instructors. That approach should demonstrate to your employees your long-term commitment to the company's ethics program since their instructors do not go away after the training is completed; rather, they are available to answer future questions or resolve problems. Insofar as the selection of instructors is concerned, you might experiment with a team teaching approach, in which you team a subject matter specialist with an effective teacher.

Table 2-4 presents a list of possible topics for a contract compliance training curriculum whether prepared in-house or externally. Course content should be centered around compliance with regulations, laws, and your internal company policies and procedures. If curricula are prepared outside, be sure they are appropriately tailored to your organizational structure and procedures. Critiques of training courses should be obtained from each employee to ensure responsiveness in future classes.

Class Size and Composition

Training classes limited to no more than 25 employees are usually the most effective. Even smaller classes may be preferable because they enhance class involvement and discussion.

Training classes composed of employees from the same disciplines such as accounting, engineering, or marketing have advantages and disadvantages. Training of like audiences can be made more responsive to the individual's training needs and each employee may come away with a stronger insight into their individual ethical issues. However, such training does not develop a much-needed awareness of the ethical problems of other parts of your company. A marketing

TABLE 2-4

CANDIDATE TOPICS FOR CONTRACT COMPLIANCE TRAINING

Topic	General content
Time cards	Procedures, regulations, warning signals, controls
Proposal costs	Contract pricing proposals, indirect proposal costs, termination cost proposals, change cost proposals, cost principles, cost accounting standards
Independent research and development (IR&D) and bid and proposals (B&P)	Use and misuse, differentiation among IR&D, B&P, and overhead charges, controls to ensure proper cost identification
Property management	Government-furnished property use and requirements, company procedures and controls
Defective pricing	Definition, governing regulations, company policies, certifications, risk areas, penalties
Expense reporting	Company procedures, allowable costs, accountability
Billing	False billing, unallowable costs, certifications
Quality, safety, and testing	Specification compliance, product substitution
Subcontracts	Purchasing system, flowdown Government requirements, documentation requirements, bribes, proposal evaluation, small business
Conflicts of interest	Laws, regulations, procedures
Pricing	Antitrust violations, collusive bidding, certifications, company procedures
Fraud statutes	False claims, false statements, mail fraud, Racketeer-Influenced and Corrupt Organization (RICO) Act, antikickback
Other laws	Truth in Negotiations Act, Competition in Contracting Act, Contracts Disputes Act, Small Business Act, labor laws
Gratuities	Company policy, Federal/state/local laws, penalties
DoD IG fraud indicators	Defective pricing, antitrust, cost mischarging, product substitution, progress payment, fast pay, bribery, gratuities, conflicts of interest, material transfer
International contracting	Export controls, license agreements, teaming arrangements
Marketing practices	"Procurement Integrity" certification
Drug-free workplace	New statute and DoD regulations
Audit procedures	New criminal penalties for "obstruction" of auditors

representative who understands the certification requirements of a contracts professional, for example, may feel a stronger commitment to ethics.

Concurrent training of supervisory and nonsupervisory personnel from various disciplines creates a healthier environment for discussion and learning, particularly of case studies, which usually have multidisciplinary aspects within the company. However, the disadvantage of this class composition is that individual training needs in special areas cannot be as deep.

We recommend that you experiment to find the best class composition for your company. Consider a hybrid training program in which multidisciplinary classes give way to classes in which personnel receive additional in-depth training in ethics program aspects peculiar to their discipline.

You must be sure to keep accurate employee attendance records at training sessions. Such records will permit the Government to evaluate employee training attendance in any action involving possible debarment or suspension of your firm.

Training Methods

Even though the greatest amounts of information can be delivered through a lecture, that process may not be the most effective in ensuring quality training. Many firms use short lectures augmented by vu-graphs (overhead projections) and films. Lectures are often followed by informal round-table discussions of specific cases in small groups. Such discussions identify common ethical issues, compare and evaluate approaches to deal with them, and permit employees to become actively involved in developing solutions. Discussions enhance development of sound judgment and heighten ethical awareness. (Some sources of video material for use in ethics training are listed in Appendix E.)

Let's look at an example of the four-step process for developing discussion cases. In Step 1, the instructor creates a hypothetical example of a mischarge on a time card using actual company forms. Second, the instructor establishes the seriousness of the action by distributing copies of newspaper accounts of indictments or convictions, or excerpts of related fraud statutes. The third step is a presentation of the specific company practices and rules governing that conduct. Finally, the group participates in a discussion of the issues in order to understand business practices to prevent misconduct. A sample scenario is provided in Table 2-5.

TABLE 2-5

SAMPLE GROUP DISCUSSION CASE

1. The case	Program manager knowingly charges cost-reimbursement type contract for work on a fixed-price contract.
2. Accusations	Violates Civil False Claims Act and Criminal False Claims Act (see Appendix B).
3. Company policy	Company policy requires accurate time charging, particularly in recording labor charges to the Government.
4. Best practices	Employees maintain daily records of time charges. Supervisors review time cards intermittently and randomly. Managers should not feel pressured to make unethical judgments for the "good" of the company.

Training in ethics and contract compliance need not stop with formal training. Ethics and compliance issues can be introduced into normal staff meetings and executive off-site meetings. This procedure will reinforce training by updating employees on current ethics issues and reiterating the company's commitment to an ethics program.

Quantity of Training

Every employee should receive enough training to recognize ethical problems immediately and to know how to handle them. The exact amount of training depends on the maturity of the work force, the complexity of the company's Government contracting activity, and the amount of time the company is willing to invest in training to improve ethical conduct. Current industry practices vary from 1 hour to 4 or more hours of formal training with different degrees of follow-up. A common practice is to provide at least 2 hours of ethics training updated with 2-hour sessions at least every 2 years. More frequent updating may be needed, depending on the results of internal compliance reviews and employee critiques. Such a program will lead to continued reinforcement and will allow you to revise your training program as risk areas change.

MONITORING

Employee reporting of noncompliance with ethical standards and Government regulations is but one means by which a company can detect and deter misconduct. Another means is a systematic monitoring procedure. It has the added advantage of enabling the company to assess its ethics program to ensure that it is operating properly. The monitoring may include internal control systems and procedures, outside audits, and internal audits. The effectiveness of your review and control procedures may be a mitigating factor in the Government's decision of whether, and with what severity, to impose administrative or prosecutorial sanctions in the event of any misconduct. Periodic surveys and random checks with individual employees by an ombudsman are also used to appraise the ethical climate of a company.

Internal Controls

A number of internal controls and procedures and policies can also be effective in limiting misconduct. When a company establishes a system of internal controls and subjects those controls to internal auditing and oversight, its employees are much more likely to comply with the company's code of ethics.

This section of the primer addresses internal controls aimed at ensuring compliance with ethics programs and with the rules and regulations of Government contracting. Since elements of your ethics program and Government contracting rules and regulations are often the same or quite similar, the internal controls established to ensure adherence to your code of ethics are often coincidental with those needed for contract compliance.

Internal control systems generally do more than detect or deter misconduct. According to the Defense Contract Audit Agency (DCAA) Contract Audit Manual, they are useful in ensuring operational efficiency, adherence to company policies of all types, and the proper use of company assets. In this primer, however, we have limited our interest in internal controls to those designed to enforce ethical standards and compliance with Government contract rules and regulations.

We cannot readily prescribe internal control systems for your company. Such controls depend on organizational structure and operational processes unique to each company. You must design your internal control system to address particular high-risk areas within your company's unique operations. For your consideration,

DoD has prepared the *Contract Risk Assessment Guide* (CRAG),² which addresses five high-risk areas for contractors doing business with the DoD: indirect cost submission, labor charging, material management and accounting, estimating systems, and purchasing. The CRAG describes methods your company might use for internal control and techniques for auditing the effectiveness of those controls. While the CRAG is designed primarily to encourage contractors to develop more effective internal control systems and in so doing provide the Government with an opportunity to reduce its oversight, it is also a useful tool for guiding you through the aspects of internal controls.

Table 2-6 presents some illustrative summaries of internal controls for labor charging suggested in the CRAG and auditable procedures for each control. The CRAG also presents similar controls and auditable procedures for the other four high-risk areas.

Instituting Internal Controls

No single system of internal controls and procedures is appropriate to all contracting or all classes of contractors. A general approach for developing a complete system of internal controls is more easily defined. Such an approach consists of the following general steps:

- Perform a risk analysis to define areas that require attention. You begin a risk analysis by reviewing incidents of past misconduct, evaluating your company's current organization structure, the competency of your personnel, the delegation of authority, the effectiveness with which responsibilities are communicated, and the existing checks and balances.
- Concentrating on high-risk areas, list your company's business activities and the functions performed within each activity. Payroll is an example of a business activity. It includes functions such as time card preparation, time card review, data input, and disbursement. Another example of a business activity is business development, which includes functions such as customer interface, industry marketing analysis, bid decisions, and proposal preparation.
- Analyze the functions of each major business activity in terms of inputs, required documentation, processing steps, and approvals required.

²*Contractor Risk Assessment Guide*. Department of Defense. Oct 1988.

TABLE 2-6

ILLUSTRATIVE CONTROLS AND PROCEDURES

Element	Control	Procedure
Direct and indirect labor charging	Provide policies and procedures for instructing employees on proper charging of direct and indirect labor and for ensuring that time is charged to the proper cost objective.	Procedures should address time card preparation, control, submittal, and approval; employees should be advised of how to record paid and unpaid absences; employees should be provided examples of timekeeping and labor distribution documents and given instruction for completing them, submitting them, and securing their approval; and employees should be given a statement of the consequences for knowingly mischarging time.
Labor hour recording	Assure that labor hours are accurately recorded and that corrections and appropriate approvals are documented.	Work should be authorized by employees other than those performing the work; time records should be completed in ink and any corrections should be initialed on a daily basis, kept under employee's control, and signed by the individual employee; time cards should be controlled and preprinted with the employee's name and number.
Allocation of labor costs	Assure that labor costs are properly allocated to cost objectives.	Verify that total labor hours in labor summaries agree with total labor entered into the timekeeping systems; reconcile labor distribution with time cards and wages/hours paid per the payroll; reconcile hours charged on time cards with attendance records.

- Identify the causes of misconduct in each of the functions. Those causes may consist of improper authorization, improper processing, misclassification, or failure to substantiate actions where required.
- For each major cause, develop a control designed to minimize causes of misconduct suitable to your organizational structure and procedures. In addition to the control techniques suggested in the CRAG, the DoD IG Handbook, *Indicators of Fraud in Department of Defense Procurement*, presents fraudulent behavior scenarios that can be used as the basis for structuring internal controls.³

For companies conducting business in commercial markets, the costs of instituting and auditing internal controls are usually compared with benefits. An extra dollar of control implementation costs is only justified if it prevents more than a dollar's worth of loss. With Government contracting and its associated public accountability, misconduct or the appearance of misconduct often must be prevented even if that prevention cost is relatively high. Potential losses resulting from suspension and debarment also motivate contractors to initiate internal controls.

External Auditing

Securities and Exchange Commission (SEC) rules require that public companies' financial statements be audited annually by an independent certified public accountant (CPA). Lending institutions may also require independent financial audits of private companies. In a financial audit, an independent CPA reports on the fair presentation, in all material respects, of your company's financial statements. The CPA's responsibilities for detecting errors, irregularities, and illegal acts generally relate only to those that could have a direct and material effect on the financial statement.

While the independent auditors' roles in detecting fraud in financial reporting are increasing, their successes in detecting misconduct are largely dependent upon the pervasiveness of the misconduct. Misconduct on Government contracts may go undetected by an independent auditor because their audits focus on the material aspects of financial statement.

³*Indicators of Fraud in Department of Defense Procurement*. Office of the Inspector General, Department of Defense. GCS 20-87. Jun 1987. Related publications by the DoD Inspector General include *Handbook on Labor Fraud Indicators* (Aug 1985), *Handbook on Fraud Indicators: Material* (Jun 1986), and *Handbook on Scenarios of Potential Defense Pricing Fraud* (Dec 1986).

While the external auditors are evaluating the effectiveness of your company's financial control system, they might also evaluate the design of your ethics program to ensure that it provides management with the desired level of assurance that the company is complying with its own code of conduct and with Government rules and regulations. At the same time, the auditors could also review the operations of your ethics program to ascertain that it is being implemented in a manner consistent with the design objectives. They will not typically, however, conduct a detailed audit to ensure practices are being implemented as stated nor will they certify that business is being conducted in an ethical manner. Exclusive reliance upon external auditors is not only expensive but is generally insufficient to generate complete confidence that the code of ethics is being followed.

Company management is ultimately responsible for monitoring and evaluating the company ethics program for proper business conduct and compliance with Government rules and regulations. While you can use external auditors to provide an overall assessment of your ethics program's design, you should not use them to evaluate its success. Therefore, to assist management in monitoring the ethics program, the *internal* audit function becomes important.

Internal Auditing

Internal auditing is an independent appraisal function established within the organization to examine and evaluate its activities. To carry out that responsibility, the internal auditing function performs the following actions:

- Ensures that all company policies, procedures, and practices reflect management's philosophy
- Tests systems established by management to ensure policies, procedures, and laws are followed
- Assesses whether the internal financial controls are suitable for the organization
- Conducts audits to test the economy and efficiency with which resources are used

- Advises the board of directors, through its audit committee, of significant financial control weaknesses if management fails to take corrective action.⁴

Today the scope of internal auditing is broadening from what was once perceived as an accounting function to involve such other high-risk areas as purchasing and subcontracts, product substitutions, cost allowability, labor charging, material requirements planning, estimating, truth-in-negotiations, independent research and development and bid-and-proposal expenditures, Government-furnished property accountability, and inventory control. Ensuring the Government's interest by complying with high ethical standards, laws, and regulations protects the company's long-term interest.

The Institute of Internal Auditors, the professional organization for internal auditors, has established professional internal auditing standards for effective internal auditing and also provides guidance on the prevention and detection of fraud. We have included them in Appendix B, *Suggestions for Further Reading*.

Organizational Independence

Internal auditors are independent when they can carry out their work freely and objectively. Independence, which permits them to conduct impartial and unbiased audits, is achieved through organizational placement and status. Within many companies, the internal auditors' place in the organization is important enough to permit those auditors to carry out their responsibilities without internal interference.⁵

The reporting lines of the internal auditor often enhance this independence. Specifically, the internal auditor, or in larger companies, the director of internal audit, may report to a company officer who can

- Guarantee independence and objectivity
- Ensure broad audit coverage
- Give adequate consideration to audit reports
- Take action on audit recommendations.

⁴Williams, Joseph D. "The Board of Directors' Reliance on the Internal Auditor." *Internal Auditor*. Aug 1988. p. 33.

⁵*Report of the National Commission on Fraudulent Financial Reporting*. Oct 1987. p. 166.

In most cases, these requirements translate to reporting at the highest levels.

The internal auditor or the director of internal auditing often is appointed by the audit committee of the board of directors and reports to, and has full backing of, the president or chief executive officer. These internal auditors also report to the audit committee of the board of directors to support that committee's continuing assessment of the adequacy of internal controls. The Treadway Commission goes so far as to recommend that the audit committee consist of outside directors only.⁶ Finally, such internal auditors should have direct access to the chairman of the board for company emergencies.

The Treadway Commission also recommends that the board of directors approve a charter for internal auditing. It should establish the internal audit function within the organization; provide organizational status; provide access to company records, personnel, and property; and define the scope of the internal auditing activities.⁷

Access of Internal Audits

Some companies offer their internal audit reports freely to DCAA; however, many do not and strongly affirm the right not to do so. A decision on this matter depends upon the overall relationship your company has with DCAA and the degree to which access is viewed as an infringement on management's prerogatives or an opportunity to establish or maintain a relationship with DCAA. DCAA will not reduce oversight unless it has confidence in your internal control system; to gain that confidence, DCAA believes it needs to review your internal audit reports. Internal audit reports provide evidence of the effectiveness of your internal controls. That effectiveness may be a factor if your company should become involved in debarment and prosecutorial considerations.

Recently, the courts ruled that DCAA has no subpoena power to require contractors to provide internal audit reports. It can seek cost verification data, however, for Government contracts, but that verification does not extend to the work product of internal auditors. Notwithstanding the court rulings, DCAA continues to request internal reports to assess internal control systems and/or internal policing

⁶*Report of the National Commission on Fraudulent Financial Reporting.* Oct 1987. p. 171.

⁷Op. cit., p. 42.

procedures. By providing DCAA copies of your internal audit reports you may encourage it to consider reducing its audit and oversight.

Relationship of Monitoring Program to Administrative and Prosecutorial Sanctions

The existence and effectiveness of a compliance monitoring system will be a factor in the Government's decision to prosecute and its decision to, and to what extent to, suspend or debar. In determining suspension and/or debarment, DoD will consider the following factors:

- The extent to which your monitoring program provides periodic reviews of company business practices, procedures, and policies and uses internal controls to ensure employee compliance with company standards of conduct and Government contracting rules and regulations.
- The extent to which you have emplaced external and internal auditing.⁸

Those factors will also be considerations in any prosecutorial decisions by the Department of Justice. The Department will also judge whether your company program is more than a mere pro forma action to comply with the law.⁹

⁸DoD FAR (Federal Acquisition Regulation) Supplement (DFARS) 3-7000. "Contractor Responsibility to Avoid Improper Business Practices."

⁹Department of Justice Memorandum to All U.S. Attorneys. Subject: "DOJ Guidelines Re: DoD Voluntary Disclosure Program." 17 Jul 1987.

CHAPTER 3

VOLUNTARY DISCLOSURE

We have now discussed four important aspects of an ethics program — a code, communications, training, and controls. Another major element to be considered is whether your company should adopt voluntary disclosure procedures. Voluntary disclosure is the free and willing notification to the Government of a suspected illegal or improper activity.

Before the existence of formal voluntary disclosure programs, some companies voluntarily came forward to the procurement contracting officer (PCO) to disclose irregularities. They did so because of their high sense of corporate ethics, and they can continue that practice without adopting a formal voluntary disclosure posture. This section describes the advantages — and also notes the disadvantages — of engaging in the voluntary disclosure program currently utilized by the Department of Defense.

Voluntary disclosure begins when contractors themselves detect and notify the Government of suspected illegal or improper conduct. The contractor may conduct its own internal investigation, which may later be verified by the Government, and if necessary, the contractor will make restitution. In return for a prompt voluntary disclosure, full cooperation, complete access to necessary records for verification, restitution, and adequate corrective actions, a contractor may be treated more favorably in any ensuing prosecutorial suspension or debarment proceedings. In addition to describing the advantages of a voluntary disclosure program, we also describe the procedures and note the legal issues associated with it in this chapter. We also discuss the separate rights of the Government, the contractor, and the employee in this evolving process.

ADVANTAGES OF DISCLOSURE

Participation in the voluntary disclosure program puts your employees on notice that you will not tolerate improper activity, and in that sense, voluntary disclosure acts as a deterrent. Disclosure also influences the timing and focus of investigations. For example, under the DoD voluntary disclosure program, the

Government will generally afford the company an opportunity to conduct its own investigation, which can be better coordinated with day-to-day business operations than an investigation conducted at the convenience of the Department of Justice or DoD IG.

While participation in the voluntary disclosure program has many benefits, perhaps the most attractive is the possibility it offers for favorable treatment in suspension and debarment proceedings. Suspension and debarment authorities will consider as mitigating factors, among other things, (1) the timely disclosure of wrongdoing by the contractor, (2) full contractor cooperation in any resulting Government investigation, (3) contractor restitution, and (4) appropriate disciplining by the contractor of the individual involved. If the contractor is accepted as a true "volunteer," DoD will expedite its own investigation, refrain from making suspension and debarment decisions until all facts are known, and advise the Department of Justice of the contractor's cooperation.

Another area of possibly favorable treatment involves the Government's determination of whether to prosecute. The Department of Justice will consider favorably the implementation of a meaningful compliance program and the adoption of a voluntary disclosure policy. In addition, the Department of Justice will consider the extent and pervasiveness of the fraud, the level of corporate employee participation, contractor cooperation, and remedial action taken. Participation in the voluntary disclosure program, however, in no way guarantees your company immunity from prosecution, and you should consult company counsel prior to any decision to disclose suspected wrongdoing to the Government.

In the event you choose not to voluntarily disclose suspected illegal or improper conduct, however, you may receive significantly greater penalties if you are caught. If a corporate executive ignores a clear signal of misconduct, the Department of Justice may assert reckless disregard of, willful blindness to, or deliberate indifference to incriminating facts in securing indictments of the company and its management. If you are unsure of the illegality or impropriety of some particular conduct, disclosing it to the administrative contracting officer (ACO) or PCO will, at least, demonstrate your good faith. Such good faith along with your ongoing compliance programs should provide evidence of your company's "present responsibility" in any related suspension or debarment proceeding.

PROCEDURES

This section describes the procedures you should follow to make a voluntary disclosure. We define "voluntary," tell where you can make a voluntary disclosure, recommend what you should include in a disclosure, and recommend when you should disclose.

What Is a Voluntary Disclosure?

To be "voluntary," a disclosure must be initiated on behalf of the company before it is discovered by, or otherwise pointed out to, any Government agency. Furthermore, you must take prompt and complete corrective action and fully cooperate with the Government in any ensuing investigation. If you meet those requirements, you will be considered to have voluntarily disclosed and may avoid or mitigate the severity of suspension, debarment, or prosecution. Other preconditions to possible favorable treatment include having the requisite internal controls and corporate procedures in place and other responsible contractor actions. Merely reporting a violation without an ethics program in place or making a disclosure that you know is about to be discovered by the Government is likely to have only a minor impact on these judgments. Once the DoD IG has evaluated the disclosure and determined that it is voluntary, the case will be taken over by the Department of Justice which may negotiate about the conduct of investigations and all administrative procedures. The agreement you reach with the Government is discussed in some detail in the DoD IG handbook on voluntary disclosure.¹

Where Do You Make a Voluntary Disclosure?

A voluntary disclosure of a suspected violation of law should be made to the DoD IG with simultaneous notification to DCAA and your company's contracting officer. Contractual violations that may be corrected by amending billings, prices, or accounting records should normally be disclosed to the ACO or PCO. If a contractual violation is later determined to be an illegal action, your having advised the PCO or ACO may be a mitigating factor for your company in any subsequent criminal or administrative proceedings.

¹*The Department of Defense Voluntary Disclosure Program: A Description of the Process.* Department of Defense Inspector General IGDPH 5505.50. Sep 1988.

What Do You Disclose?

Your report on any internal investigation made in conjunction with a voluntary disclosure would normally be expected to include the following elements:²

- Division/unit in which the violation occurred
- Individuals involved in the violation
- Level of supervision involved
- Persons interviewed during investigation and their titles
- How any improper practice was initiated and conducted
- Time period during which the violation occurred
- How the violation was discovered
- Weaknesses in system that permitted the violation to occur
- How the violation affected the amounts paid by the Government
- Disciplinary action taken or proposed
- Corrective action to prevent future occurrences
- Statement on how company will make restitution.

The more thoroughly developed these elements, the more satisfactorily the Government is likely to view the voluntary disclosure.

When Should You Disclose?

The decision of when to disclose presents a dilemma. On the one hand, disclosure should be made as soon as possible to ensure the Government that your company is committed to its voluntary disclosure policy; on the other hand, however, premature disclosure of the identity of individuals suspected of criminal violations might falsely accuse innocent employees. Such incorrect and accompanying disciplinary actions may subject the company to legal action by the accused employee alleging, for example, a defamation of character or wrongful discharge. One approach to resolving this conflict is to make an initial disclosure with preliminary facts and figures without names, pending further investigation. The

²*Voluntary Disclosure.* A Report by the Special Committee on Voluntary Disclosure. America Bar Association. Section of Public Contract Law. 14 Nov 1987. pp. 18-19.

specifics of such an action would need to be worked out between your legal counsel and the DoD IG.

LEGAL ISSUES

The area of voluntary disclosure is fraught with unresolved and highly technical legal issues. They include employee constitutional rights, defamation of character suits, and company rights. We note those areas in this section of the primer to help provide you with a general understanding of some of the legal issues. We do not offer legal advice nor should any statement in this primer be construed as such. Dealing with these legal issues may be complex and time-consuming and usually will require professional legal advice.

Employee's Constitutional Rights

When investigating employee misconduct as part of a Government contracts-related ethics program or the result of a commitment to voluntary disclosure, the company may be alleged to be acting as an "agent" of the Government. Such an allegation may provide the basis for legal action against the company by investigated employees if the company arguably violates employees' constitutional rights during its investigation. Those rights include freedom of speech, protection against unreasonable search and seizure, guarantee of procedural due process (including the right to refuse self-incrimination), and guarantee of the right to the assistance of an attorney when facing criminal liability.

In any event, when developing company ethics and compliance programs and considering whether to adopt a policy of voluntary disclosure, you should consider the rights of your employees. In particular, you should consult with legal counsel to develop appropriate procedures for notifying employees of their rights in any internal company investigations.

If an employee remains silent and demands a lawyer, it becomes increasingly difficult to conduct an internal investigation in support of a corporate voluntary disclosure. Further, employees who are told or believe they are targets of the investigation have very little incentive to cooperate with a voluntary disclosure, particularly in view of the fact that its benefits accrue to the company and not the employee.

Some companies notify employees in writing of the company's right to inspect all company property including desks, files, and cabinets in pursuit of Government contract compliance. Such action may reduce company exposure for violating protections against unreasonable searches and seizures. Such notification can be made part of the employee standard of conduct, can be included in the employment agreement, or both.

To conduct investigations properly, companies must strive to obtain all the information they can while at the same time observing individual rights. Because those obligations may conflict, you may be tempted to take the easier course — duping the employee. Be careful; such deception might ultimately create legal liability. It will also thwart your efforts to create a bond of trust between management and employees.

Company Rights

In its evaluation of the merits of your voluntary disclosure, the Government will want the results of any internal investigation you choose to conduct, including supporting information on the illegal conduct as well as substantiation of restitution amounts. You must reach an agreement with Government investigators on the kind and amount of information you will provide in the voluntary disclosure. Company legal counsel, of course, should be involved in the negotiation of any such agreement. However, some companies are also becoming increasingly concerned about the protection of the attorney-client privilege they share with in-house and outside legal counsel and the protection of the work product generated in that relationship.³ These rights may be waived if protected documents or otherwise privileged information is provided to Government investigators as part of the voluntary disclosure program.

By providing the Government with a detailed investigation report that fully complies with the spirit of the voluntary disclosure program, you may be subjecting yourself to liability to investigated employees. In preparing their defense, employees under investigation may have legal access to the very same reports you prepared and provided to the Government.

³*Government Contractor's Self Governance Obligations and Employee Relations*. Washington Legal Foundation. 1988.

Any communication or action that unjustly impugns an individual's honesty, integrity, or professional reputation in the community may create defamation liability. A company may be subject to such liability as a result of a voluntary disclosure, an internal investigation, a hotline call record, any corrective or disciplinary action, or other personnel practices if a false and defamatory statement is made about an employee. To avoid liability, you must be factually accurate when including names of suspected individuals in internal investigation reports that are later provided to the Government as part of a voluntary disclosure.

As a general rule, you should make no representations and take no adverse actions against any employee until you have compiled sound documentary proof that confirms the employee's wrongdoing. This approach emphasizes the importance of a competent investigation.

The difficulty in deciding how to document investigations centers around the fact that guilt may not be apparent for months or years. What may appear in the initial stages as a minor infraction or personnel matter may ultimately develop into a major criminal disclosure or the basis of a Qui Tam suit. It is impossible to know early on in the investigation process which path will develop. Consequently, all of your investigations and their documentation should be treated with great care and conducted by or with professional legal support.

CURRENT STATUS

The concept of voluntary disclosure is largely a new one for Defense contractors. As a result of the concerns described in this chapter, the Government and the legal community are attempting to resolve conflicts and provide responsible guidance.

Specifically, the American Bar Association has formed an ad hoc committee that comprises representatives of Government and industry to review and develop a common understanding of those issues. The report of that committee is referenced in Appendix B. Additionally, the DoD IG has prepared the *Voluntary Disclosure Program*, which is also described in Appendix B.

While you do not now have to subscribe to voluntary disclosure procedures, recently proposed DoD regulations would make establishment of a "Code of Conduct

Program" containing the elements described in this primer a mandatory precondition to award of contracts over \$25,000.

APPENDIX A

PROTOTYPES OF STANDARDS OF CONDUCT

PROTOTYPES OF STANDARDS OF CONDUCT

INTRODUCTION

This appendix presents some prototypes for your consideration in preparing standards of conduct for your company personnel. We have prepared such prototypes in six areas and have included procedures for reporting violations and for disciplinary action. These prototypes are provided as examples only and do not constitute official DoD guidelines.

PRODUCT QUALITY, SAFETY, AND INSPECTION

We must strive to maintain excellence in the quality of our products and services to our customers. This means we must be responsive to customer requirements; meet or exceed all design, inspection, and performance test criteria; and conduct all required inspection and performance testing accurately, completely, and truthfully. As employees, we are expected to be aware of these responsibilities and exercise them.

We will deliver goods that meet contract requirements and give our customer the highest degree of confidence in our products. We will not tolerate improprieties – for example, the failure to conduct required testing, the manipulation of test procedures or data, or the unauthorized substitution of one product or component for another, nor will we otherwise fail to meet contract specifications.

SALES AND MARKETING

Procurement laws have two basic purposes: (1) to obtain the best possible products or services for the public at the fairest prices and (2) to encourage fair competition where feasible. The conduct of every employee must reflect our desire to serve the public trust. Customer relationships must be open, comply with applicable laws and regulations, and avoid disparagement of competition.

The Government as a customer considers some sales and marketing practices to be criminal. Examples of illegal conduct include offering bribes or kickbacks to influence a Government official or Government contractor's decision regarding a procurement; or improperly obtaining Government procurement plans, other

competitive-sensitive data, or classified information. We must strictly avoid bribes, kickbacks, and bid rigging. Such conduct can result in severe criminal penalties for both the company and the individuals involved.

COMPETITION, NEGOTIATIONS, AND FINANCE

Truth in Negotiations Act (Defective Pricing)

Under this act, contractors must submit or identify cost or pricing data that include all relevant facts as of the time of price agreement. We are required to certify that, to the best of our knowledge and belief, such data are accurate, complete, and current as of the date of agreement on contract price. Employees involved in the pricing process are responsible for providing their best estimate of the effort required and for disclosing any facts relating to that estimate. Where there is any doubt about whether disclosure is required, the best rule to follow is "when in doubt, disclose."

Pricing

Employees who are responsible for contracting and pricing products and services shall comply with all applicable Government procurement regulations governing contracting and pricing activities and establish prices that fairly and realistically reflect all allowable, allocable, and reasonable costs involved in the production and delivery of products to our customers.

Competition and Antitrust

The basic U.S. antitrust laws were enacted during the 1890s in response to monopolistic and unfair trade practices in order to foster fair competition and prevent artificial restraints on the economic systems of the country. Collusive bidding, including price fixing between competitors in connection with bids or proposals, is illegal. Employees shall not discuss or exchange information with a competitor on prices, terms, or conditions of sales or services, nor shall they discuss or exchange any other competitive information nor engage in any other conduct that violates any of the antitrust laws. Any questions regarding the interpretation of antitrust laws should be referred promptly to the company legal department.

Finance and Accounting

Our firm has consistently maintained a policy that its books and records will, in reasonable detail, reflect accurately transactions and disposition of our assets. No

false entries will be made nor will any entries be omitted from our books to obscure or disguise the true transactions of the entry. It is our unequivocal position that no false, artificial, or misleading statement or entries should be made to our books, records, account documents, or financial statements. Employees are responsible for ensuring that costs are properly classified and allocated in compliance with pertinent Government accounting regulations including cost accounting standards, cost principles, contract clauses, and other provisions. Employees shall ensure that all billings to the Government accurately reflect the actual amount due for any product or service and are properly screened for unallowable or otherwise nonbillable costs or fees. The company's financial statements and all books and records on which they are based must reflect accurately all transactions of the company.

Time Card Reporting

Employees who file time cards must be particularly careful to do so in a complete, accurate, and timely manner. As Government contractors, employees must record their time truthfully and accurately based on work actually performed in conjunction with each Government contract. It is important that labor hours be recorded against the correct contract. Misallocation of time charges is strictly prohibited because such activity is a serious violation of these standards of conduct and could constitute commission of an illegal act.

COMPANY RELATIONSHIP WITH OTHERS

Company Relations with the Government

We have adopted policies to guide each of us involved in work for the Federal or state government, either directly or as a subcontractor. We will comply with the letter and spirit of contract laws and regulations. We will deliver high-quality products and services to our customers at fair and reasonable prices. We will administer and perform our contracts in a manner that satisfies both legal obligations and our own high standards. Improperities will not be tolerated, e.g., substituting unauthorized products for those called for by the specifications. A breach of our code of ethical behavior will be harshly dealt with. A continuing objective of our company is to provide our customers with the highest quality at the best possible price. It is a serious violation of our standards for any employee to seek a competitive advantage through the use of gifts, gratuities, entertainment, or other favors. Under no circumstances may we offer or give any item of value to a customer or a customer's representative in

an effort to influence a contract award or other favorable customer action. It is our policy to compete solely on the merits of our products and services.

Company Relations with the Community

As a corporate citizen of this nation and a member of the community in which we do business, we have an obligation to obey all local, state, and Federal laws and to behave in a responsible and ethical manner. We should also respect the environment of the community and exercise good judgment concerning the impacts of buildings, waste disposal, land use, and other factors that can have an adverse effect on its environment.

Company Relations with Its Supplier

Materials, supplies, equipment, consulting, and other services should be procured from qualified suppliers at the lowest overall cost available within the requirements for quality, performance, and the vendor's ability to meet delivery schedules.

As a company and as individuals, we will always employ the highest ethical business practices in source selection, negotiations, determinations of awards, and administration of purchasing activities. If, at any time an employee feels under pressure to make a decision contrary to our stated code of ethics, he/she should bring that problem to the attention of his/her management for resolution. If an employee suspects a peer is involved in a potential kickback or that a supplier has proposed a kickback, the employee should immediately notify the company's legal department.

Company Relations with Foreign Officials

No company employee should promise, offer, or make any payments in money, products, or services to any foreign official in exchange for, or in order to induce, favorable business treatment or Government decisions. The Foreign Corrupt Practices Act and other U.S. laws prohibit the payment of any money or any things of value to a foreign official, foreign political party, or any candidate for foreign political office for purposes of obtaining, retaining, or directing business. As a company or as individuals, we must strictly abide by these laws. We must report any violations to the company legal department immediately.

EMPLOYMENT PRACTICES

Equal Opportunity

As an equal opportunity employer, we comply with all applicable rules and employment laws. This policy embraces all aspects of the employment relationship, including application and initial employment; promotion and transfer; selection for training opportunities; wage and salary administration; and the application of service, retirement, seniority, and employee benefit plan policies. Moreover, our policy is to provide employees with a workplace free from any form of sexual or racial harassment.

Hiring Federal Employees

We have clearly written policies and procedures that specify the conditions under which we may employ former U.S. Government employees and we have specific policies that describe the duties they may perform as our employees. It is absolutely essential that we and any such employees abide strictly by the letter and spirit of these policies and procedures to preclude any perception of illegality or impropriety.¹

MAINTAINING POSITIONS OF TRUST

Conflicts of Interest

We expect each of our employees to devote full working time and effort in the company's interest and to avoid any activity that might detract from or conflict with the company's interest. Conflict of interest arises when a person in a position of trust is involved in a private interest that conflicts with the responsibilities of that position of trust. Conflicts of interest situations are particularly sensitive because perceptions of conflicts can sometimes be as damaging as real conflicts. We must be careful, therefore, to avoid even the appearance of a conflict of interest. We should also be alert to and avoid situations that could cause customer's employees to violate their standards of conduct.

¹Some companies preclude hiring of retired military personnel, while others simply ensure that employees file the requisite employment forms pursuant to DoD policy. Whatever your standard, you must give this area high-level management attention.

Examples of potential conflicts of interest situations are

- *Employment by a competitor while employed by us*
- *Acceptance of gifts, payments, or offers of employment from those trying to do business with us*
- *Acting as director for another company while employed by us*
- *Acting as a consultant to our customers or suppliers*
- *Employment of relatives of our customers or suppliers.*

Apparent conflicts of interest can easily arise. Any employee who feels he/she may have a conflict situation, actual or potential, should report all pertinent facts to his/her supervisor or the ombudsman for guidance.

Gifts, gratuities, or favors offered to obtain favorable treatment in award or performance of a contract are serious violations of our standards of conduct. Those acts are also violations of Government regulations and laws and can result in heavy fines and imprisonment.

Political Activities

Every employee is forbidden the use of company funds for the support of political parties and candidates. No employee is authorized to make or approve such a contribution without approval of the company's president.

Insider Trading

The purchase or sale of securities based on inside and material information is prohibited by state and Federal laws. This prohibition extends to indirect and direct transactions, puts or calls, or any other interest in the security and to recommendations about the security.

Information is considered inside and material if it has not been publicly disclosed and it is sufficiently important that it could affect a decision by anyone to buy, sell, or hold our securities. Such information includes trade secrets, marketing plans, and product development. Any attempt by any unauthorized person to obtain sensitive information or gain access to secured company locations should be reported at once to the company security organization.

Restricted Company Information

All employees are restricted from disclosing to any outside party, except as specifically authorized by management pursuant to established policy and procedures, any nonpublic business, financial, personnel, or technological information, plans, and data they have acquired during their employment with the company. Upon termination of employment, an employee may not copy nor retain any documents containing company restricted information. An employee agreement to protect the confidentiality of such information in perpetuity is considered an important condition of employment with the company.

Restricted Government Classified and Proprietary Information

The importance of preventing disclosure of any company information that could be of value to saboteurs, competitors, and espionage agents, including those engaged in industrial espionage, cannot be overstated. We have special obligations to comply with laws and regulations that protect classified information. Employees with valid security clearances who have access to classified information must ensure that such information is handled in accordance with pertinent Federal procedures. These restrictions apply to any form of information, whether written or electronic.

REPORTING VIOLATIONS AND DISCIPLINARY ACTION

Employees are required to report known or suspected violations of the aforementioned standards to the company ombudsman. Violations may be reported orally or in writing. All such reports will be treated in confidence, will be investigated promptly, and will result in corrective action if deviations are found. A response will also be made to the reporting employee as to whether the matter will be investigated or whether the ombudsman has determined the matter to be without merit and will take no further action.

Disciplinary actions for violations of the Company Code of Ethics or standards of conduct may include oral reprimand, written reprimand, suspension, or immediate termination. Disciplinary actions for violations of certain laws or regulations can include criminal prosecution of individuals by the Government with conviction resulting in probation, fines, or imprisonment.

ACKNOWLEDGMENT

The following prototype form may be used to solicit the employee's acknowledgment that he/she has read and understands the code of ethics and standards of conduct and agrees to adhere to these company policies.

ACKNOWLEDGMENT	
I HEREBY ACKNOWLEDGE THAT I HAVE CAREFULLY READ AND UNDERSTAND THE FIRM'S CORPORATE CODE OF ETHICS AND EMPLOYEE STANDARDS OF CONDUCT.	
I HAVE THE FOLLOWING COMMENTS ON THE STATEMENT (PLEASE ATTACH SEPARATE PAGE).	
I AGREE TO CONDUCT MYSELF IN A MANNER CONSISTENT WITH THE POLICIES AND PRACTICES SET FORTH IN THESE STATEMENTS. ^a	
<hr/>	<hr/>
Date	Signature
	<hr/>
	Print Your Name Clearly

^a This statement is sometimes not included because it may conflict with labor union agreements. Consult your company counsel for the law applicable to your situation.

APPENDIX B

SUGGESTIONS FOR FURTHER READING

SUGGESTIONS FOR FURTHER READING

Accounting Guide for Government Contracts. Trueger, Paul M. Ninth Edition. Commerce Clearing House. 1988.

This 1,330-page book is clearly the most comprehensive text on Government contract accounting. In addition to general information on doing business with the Federal Government, it includes specific accounting treatment of all types of costs, i.e., material, labor, overheads, bid and proposal (B&P), etc. It also provides special chapters on termination, claims and disputes, profit, fraud, and tax considerations. We highly recommend it as a reference text.

Codification of Statements on Auditing Standards. American Institute of Certified Public Accountants. Commerce Clearing House. 1988.

Major sections include statement on auditing standards, general standards, standards of field work, standards of reporting, standards for attestation engagements, statement on standards for accountants' services on prospective financial information, and auditing interpretations.

Contract Risk Assessment Guide (CRAG). Department of Defense. Oct 1988.

The CRAG program is designed to encourage DoD contractors to develop more effective contractor internal control systems and to improve the effectiveness and efficiency of DoD oversight. Contractors demonstrating the implementation of internal control systems that meet CRAG control objectives will receive less direct Government oversight. In addition to describing the characteristics of the program itself, the CRAG includes control objectives and commonly used control procedures for five risk areas. They include indirect cost submissions, labor charging, material management and accounting systems, estimating systems, and purchasing.

Corporate Ethics. Berenbeim, Ron. The Conference Board. 1987

This report is based on survey responses from 252 U.S. and 48 non-U.S. companies, analysis of 238 corporate ethics codes, and interviews with over 300 U.S. and European CEOs and senior managers. It shows how senior executives define ethical issues, how senior executives respond to practical situations that raise ethical issues, and how companies develop codes of ethics and education programs. While some Defense companies were evaluated, it is oriented primarily toward commercial business. The report is 31 pages.

DCAA Contract Audit Manual. DCAAM 7640.1. Jul 1988.

This manual, offered on a subscription basis (quarterly), is the internal technical and procedural guidance to DCAA auditors. It should be recognized that

this manual is not intended to place additional requirements on contractors; however, it would prove very useful to contractors anticipating audits. Chapters include introduction to contract audit; contract auditing and reporting standards; audit planning; general audit requirements; review of policies, procedures, and internal controls relative to accounting and management systems; incurred costs audit procedures; selected areas of cost; cost accounting standards; review of cost estimates and price proposals; preparation and distribution of audit reports; review of contractor compliance with contract financial management requirements; audits in connection with terminated contracts; contract audits at education institutions; and other contract audit assignments and functions. Appendices include contract cost principles and procedures, statistical sampling techniques, electronic data processing systems, technical specialist assistance, graphic and computational analysis techniques, improvement curve analysis techniques, management of mobile audits, management of resident audits, and work sampling. This manual includes a comprehensive keyword index system which is helpful in locating specific subject areas.

Defense Industry Initiatives on Business Ethics and Conduct. Public Accountability. 1987 Annual Report on the Public and the Defense Industry. Prepared by Ethics Resource Center, Inc., Washington, D.C. Jan 1988.

This booklet describes the Defense Industry Initiatives and provides summary results of an 18-point questionnaire examined or reviewed by external organizations.

Government Contractors' Self-Governance Obligations and Employee Relations. A monograph by the Washington Legal Foundation. Washington, D.C. 1988.

This report documents the tough new laws enacted by Congress to eradicate waste, fraud, and abuse in the procurement process, including the False Claims Act of 1986, the Anti-Kickback Act of 1986, and the Program Fraud Civil Remedies Act of 1986. It provides a detailed legal guide for Defense procurement contractors wishing to (1) limit their liability under the new laws, (2) maximize their ability to obtain Government Defense contract, (3) observe the legal rights of their employees, and (4) maintain morale and efficiency in their operations.

Indicators of Fraud in Department of Defense Procurement. Office of the Inspector General (IG). Department of Defense. GCS 20-87. Jun 1987.

This document describes the various fraudulent acts that can occur in Government contracting through representative scenarios and general comments. Chapters include crimes involved in contract fraud; fraud in Government contracts; defective pricing; antitrust violations; collusive bidding and price fixing; cost mischarging; product substitution; progress payment fraud; fast pay fraud; bribery, gratuities, and conflicts of interest; commercial bribery and kickbacks; civil, contractual, and administrative remedies for fraud; and voluntary disclosure of fraud. Appendices include the voluntary disclosure program announcement and the

Department of Justice's letter in its regard. Additional fraud indicator handbooks are as follows:

- *Handbook on Labor Fraud Indicators*. DoD IG. Aug 1985.

This handbook is designed to raise the auditors' level of fraud recognition with scenarios that highlight some of the fraud indicators auditors may find.

- *Handbook on Fraud Indicators: Material*. DoD IG. Jul 1986.

This handbook is designed to heighten the auditors' level of fraud awareness. The scenarios on material cost mischarging cases highlight some of the fraud indicators auditors may expect to find.

- *Handbook on Scenarios of Potential Defense Pricing Fraud*. DoD IG. Dec 1986.

This handbook includes 11 specific scenarios of defective pricing situations that indicate the need for investigation for fraud.

Professional Internal Auditing Standards Volume. The Institute of Internal Auditing. Altamonte Springs, Florida. 1987.

This volume includes standards for the professional practice of internal auditing, statements on internal auditing standards, professional standards bulletins, and codes of ethics for the Institute of Internal Auditing and the certified internal auditor. Subject areas for the standards include independence, professional proficiency, scope of work, performance of audit work, and management of the internal auditing department. A bibliography of Research Foundations Publications since 1953 are also included. This volume is a must for any internal audit function.

Report of the National Commission on Fraudulent Financial Reporting. "The Treadway Commission." Oct 1987.

A comprehensive report with findings, conclusions, and recommendations on the financial reporting system in the United States. Detailed recommendations are provided for the public company, the independent public accountant, the Securities and Exchange Commission (SEC), and the education community to improve the regulatory and legal environment. Extensive appendices include research abstracts, briefing papers, case studies, and good practice guidelines assessing fraudulent financial reporting risk and audit committee operations.

The Department of Defense Voluntary Disclosure Program: A Description of the Process. DoD IG. IGDPH 5505.50. Sept 1988.

This 38-page (including exhibits) pamphlet describes the process of the voluntary disclosure program in detail. It reviews each of the steps and issues encountered in a voluntary disclosure. Those steps include the initial disclosure,

assignment of case control number, preliminary acceptance, failure to disclose information, notification requirements relating to defective products and testing, inquiry for prior Government knowledge, notification of preliminary acceptance, matters rejected, XYZ agreement, failure to sign XYZ agreement, notification of admission into the voluntary disclosure program, contractor internal report of investigation, Government actions pending contractor internal investigation, verification, contractor's cooperation during the verification, use of subpoenas, defense criminal investigative organizations (DCIOs) case management and program reports, payments by contractors, removal of a matter from the DoD voluntary disclosure program, and case completion. Exhibits include Deputy Secretary of Defense letters of 24 July 1986 and 10 August 1987; voluntary disclosure flowchart; standard XYZ agreement (to be appended later); sample letters regarding preliminary acceptance, rejection, failure to sign agreement, formal admission, receipt of contractor's report, removal from program and case closure; and DCIO investigative program report.

The Government Contract Compliance Handbook. The Government Contracts Group. Seyfarth, Shaw, Fairweather & Geraldson. Federal Publications, Inc. A Longman Company. First Edition. 1988.

This very comprehensive handbook consists of four parts plus appendices. The text is written to and for business in its struggle to comply with the many laws and regulations. This text not only treats all of the basic laws, but it focuses on gray areas in which seemingly innocent behavior or commercially accepted business practices may result in civil or criminal liability. It presents chapters on compliance requirements; contractor compliance programs; special employment problems; education and training; conducting compliance audits; collusive bidding; representations and certifications in B&Ps; defective pricing; commercial product sales to the Federal Government; foreign government sales; gratuities and bribery; kickbacks; individual conflicts of interest; organizational conflicts of interest; cost accounting standards; time and expense charging; progress payments; product substitution and quality assurance; unallowable costs and related certifications; independent research and development; B&P and selling expense; preparation, submission and litigation of claims; plus a multitude of useful appendices. We highly recommend this document. (This handbook is currently being updated.)

The Legal and Economic Consequences of Wrongful Termination. The Institute for Civil Justice. The Rand Corporation. 1988.

This 73-page report documents research findings on wrongful terminations. Sections that are treated are the erosion of traditional employment-at-will doctrine; a description of wrongful termination trials in California; payments, expenses, and settlement behavior; and policy implications and conclusions.

The Scope of Corporate Criminal Liability of the Public Contract. Graham, James J. Jones, Day, Reavis & Pogue. Washington, D.C. 30 Mar 1988.

This paper was presented by Mr. Graham at the Federal Bar Association, Pentagon Chapter, on Military Procurement Fraud and is well footnoted. It provides a legal assessment of the scope of corporate liability, the scope of criminal fraud statutes, the breadth of regulatory exposure to fraud statutes, and a review of pertinent procurement fraud cases.

Voluntary Disclosure. A Report by the Special Committee on Voluntary Disclosure. American Bar Association. Section of Public Contract Law. November 1987.

This comprehensive treatise was developed by various legal counsels representing industry, private law practice, and Government agencies. It treats the various legal elements of voluntary disclosure, i.e., purpose, consequences, cooperation, Department of Justice agreements, attorney-client privilege, work-product doctrine, Department of Justice representatives' roles, prosecuting criteria, civil liability issues, suspension and debarment, and employee interests and rights of action. Exhibits include various Government policy letters regarding voluntary disclosure, sample Department of Justice agreement, and references to the Defense Industry Initiatives and Packard Commission.

APPENDIX C

CHECKLIST FOR EVALUATING CODES OF ETHICS

CHECKLIST FOR EVALUATING CODES OF ETHICS

COMPANY CODES OF ETHICS

1. Does the company have a written code of business ethics and conduct?
2. Does the written code embody the values of the company and its employees and represent the commitment of the company and its employees to work for its customers, shareholders, and the community?
3. Does the code explicitly include a statement of the standards that govern the conduct of all employees?
4. Does the code include an explanation of the consequences of violating the standards?
5. Is there a corporate review board, ombudsman, company compliance, or ethics office or similar mechanism for employees to report suspected violations to other than their direct supervisor if necessary?

DISTRIBUTION AND ACKNOWLEDGMENT OF STANDARDS

1. Are employees required to sign an acknowledgment card that they received, read, and understood the standards of business ethics and conduct?
2. Are there any sanctions for refusal to sign the acknowledgment?
3. Were the company standards distributed to all employees, including those in labor unions?
4. Is signing the acknowledgment a condition of obtaining employment for new employees?
5. Are all consultants hired by the company also required to adhere to the standards and to sign an acknowledgment?
6. Have vendors been notified of the company standards and requested to support compliance?

COMPANY POLICIES AND PROCEDURES

1. Are company policies and procedures consistent with the published standards of conduct for employees?
2. Are company policies available as established standards so that employees can apply them to specific business situations?
3. Do company policies make appropriate reference to the company ethics program?
4. How often are the policies reviewed to ensure they reflect changing regulations for Government contracting?

TRAINING

1. Does the company have a formal training program to maximize awareness and commitment and deal with the practical application of the ethics program?
2. How is the training conducted? With tapes?, in-house instructors?, consultants?, films?, lectures?, workshops?, round-table discussions?
3. How large are the training classes?
4. Have the training classes been divided into appropriate groups: executives, senior management, other supervisory, salaried employees, and labor union employees?
5. Have the trainers been adequately trained?
6. Do the training course materials include samples of ethical situations, issues, or dilemmas specifically applicable to the employees' work environment?
7. Does the training call attention to *all* applicable standards, rules, regulations, and laws to emphasize the significance of the ethics program both personally and professionally?
8. Does the training use simple tests, rules of thumb, or key questions to help employees make choices and judgments about matters of conduct?
9. Does the training explicitly mention the name and phone number to go to for help without reprisal when a question arises that the employee is unable to assure for himself/herself?
10. Are accurate and verifiable attendance records maintained?
11. Are employees required to sign that they have received training?

12. Is there a follow-up training program? How often is it provided?
13. How is training provided to new employees?
14. Does the corporation have ongoing training programs in such high-risk areas as labor charging, new business funds, overhead expense reporting, etc.

COMMUNICATIONS AND HOTLINES

1. Does the company have a special channel that employees can use to raise questions or seek advice?
2. Does the company have a special channel that employees can use to voice concerns or make actual allegations concerning violations of the standards?
3. Is the communication channel readily available and responsive; does it protect the identity of all employees and no reprisals?
4. Are posters prominently displayed throughout the company describing how to use this communication channel?
5. Does the company include information and case histories on the ethics program in new employee publications?
6. How are employee contacts prioritized?
7. Are investigative procedures that may result from contacts established and communicated to employees?
8. Is an appropriate mechanism available for following up on reports of suspected violations to determine what occurred, who was responsible, and what corrective action was taken?
9. Is there an appropriate mechanism for letting employees know the follow-up to their reported charges?

RECOGNITION AND REWARDS

1. Is the employee compensation reward structure consistent with the ethics program?
2. Are executive/senior management bonuses based exclusively on "the bottom line"?
3. Are executive/senior management performance evaluations based on successful implementation of the ethics program on an ongoing basis?

4. How is successful implementation of the ethics program measured?
5. How are employees motivated and rewarded to actively participate in the ethics program?

REVIEW AND MEASUREMENT

1. How is the success of the program measured within the company?
2. How often is the measurement made and what management actions have been taken, if any, to implement change necessitated by this evaluation?
3. Is there a program to monitor on a continuing basis adherence to the code of conduct and compliance with Federal procurement laws?
4. Are periodic reports on adherence to the principles made to the company's board of directors, to its audit committee, or to other appropriate committees?
5. Are the company's independent public accountants or a similar independent organization required to comment to the board of directors or a committee thereof on the efficacy of the company's internal procedures for implementing the company's code of conduct?

VOLUNTARY DISCLOSURE AND INVESTIGATIONS

1. Does the company have a procedure for voluntarily reporting violations of Federal procurement laws to appropriate governmental agencies?
2. How are the rights of employees protected in the process of investigations and disclosure?
3. When deciding to voluntarily disclose, is the company absolutely sure it has disclosed all relevant facts?
4. Have employees been informed that voluntary disclosures on behalf of the company do not protect them as individuals in any way?
5. Have employees been instructed to ask auditors if they are acting on behalf of the Department of Defense Inspector General or Department of Justice or participating in a criminal investigation?

APPENDIX D

MATRIX SUMMARY OF OFFENSES

TABLE D-1

FRAUD OFFENSES SUMMARY MATRIX

Fraud offenses					
Provision or clause section	Title	Act	Intent	Standard of proof	Maximum penalty
18 U.S.C. §§ 1341 and 1343	The Mail and Wire Fraud Statutes	You devised or participated in a scheme or artifice to defraud another. You used or caused to be used the United States mails/wires in furtherance of the execution of that scheme.	You did so knowingly and willfully.	Beyond a reasonable doubt.	\$1,000 fine and 5 years imprisonment, and/or Criminal Fine Enforcement Act penalties.
31 U.S.C. § 3729	The Civil False Claims Act	You willfully made or presented a claim to the United States or any of its agencies or departments. The claim was asserted against the United States or its agencies or departments. The claim was false, fictitious or fraudulent when presented.	You knew the claim was false, fictitious or fraudulent when presented.	Preponderance of evidence.	\$5,000 - \$10,000 civil fine; 3 times the damage to the Government; and costs of prosecution.
18 U.S.C. § 287	The Criminal False Claims Act	You willfully made or presented a claim to the United States or any of its agencies or departments. The claim was asserted against the United States or its agencies or departments. The claim was false, fictitious or fraudulent when presented.	You knew the claim was false, fictitious or fraudulent when presented.	Beyond a reasonable doubt.	\$10,000 and 5 years imprisonment; and/or Criminal Fine Enforcement Act penalties.
31 U.S.C. §§ 3801 - 3812	Program Fraud Civil Remedies Act	This Act applies to certain false claim and false statement offenses under \$150,000.	You knew or had reason to know the claim or statement was false, fictitious or fraudulent when made.	Preponderance of evidence.	\$5,000 civil fine; 2 times the amount of the false claim if the Government has paid on the claim.

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TABLE D-2

CORRUPTION OFFENSES SUMMARY MATRIX

Corruption offenses					
Provision or clause section	Title	Act	Intent	Standard of proof	Maximum penalty
18 U.S.C. § 201(b)	The Bribery Statute	You directly or indirectly offered or promised to a public official anything of value for the public official or any other person or entity. ^{1/}	You acted corruptly You acted with the intent to influence an official act of the public official.	Beyond a reasonable doubt.	15 years imprisonment; 3 times the bribe; disqualification; and/or Criminal Fine Enforcement Act penalties.
18 U.S.C. § 201(c)	The Illegal Gratuities Statute	You directly or indirectly offered or promised to a public official or former public official anything of value. ^{2/}	You offered or promised the thing of value for or because of any official act performed or to be performed by the public official.	Beyond a reasonable doubt.	\$500,000 fine for corporations; and/or Criminal Fine Enforcement Act penalties.
41 U.S.C. § 54	The Criminal Anti-Kickback Statute	A subcontractor ^{3/} offered or provided a payment or compensation of any kind to a prime or higher subcontractor. He did so with respect to a contract entered into with the United States. He did so for the purpose of improperly obtaining, or rewarding, favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.	He did so knowingly and willfully.	Beyond a reasonable doubt.	\$250,000 fine and 10 years imprisonment for individuals; \$500,000 fine for corporations; and/or Criminal Fine Enforcement Act penalties.

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^{1/}Note that this statute also applies to the person who was bribed

^{2/}Note that this statute also applies to the person who received the gratuity

^{3/}Note that this section also applies to the prime or higher subcontractor

(Continued)

TABLE D-2
CORRUPTION OFFENSES SUMMARY MATRIX

Corruption offenses					
Provision or clause section	Title	Act	Intent	Standard of proof	Maximum penalty
41 U.S.C. § 55(a)(1)	The Civil Anti-Kickback Statute	A subcontractor ^{4/} offered or provided a payment, gift or compensation of any kind to a prime or higher subcontractor. He did so with respect to a contract entered into with the United States. He did so for the purpose of improperly obtaining, or rewarding, favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.	He did so knowingly.	Preponderance of evidence.	2 times the amount of the kickback, up to \$10,000.
41 U.S.C. § 55(a)(2)	The Civil Anti-Kickback Statute	An employee, subcontractor ^{5/} or subcontractor employee accepted, provided or charged a payment, gift or compensation of any kind to a prime or higher subcontractor. He did so with respect to a contract entered into with the United States. He did so for the purpose of improperly obtaining, or rewarding, favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.	No-fault vicarious liability.	Preponderance of evidence.	The amount of the kickback

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^{4/} Note that this section also applies to the prime or higher subcontractor

^{5/} Note that this section also applies to the prime or higher subcontractor

(Continued)

TABLE D-2

CORRUPTION OFFENSES SUMMARY MATRIX

Corruption offenses					
Provision or clause section	Title	Act	Intent	Standard of proof	Maximum penalty
18 U.S.C. § 207(a)	Ethics in Government Act	<p>You are within 2 years of the end of your Government service.</p> <p>You were an officer or employee of the executive branch or any independent agency.</p> <p>You appeared before the Government or made any written or oral communications in a particular matter in which you participated personally and substantially while in the government.</p>	You acted knowingly.	Beyond a reasonable doubt.	\$10,000 and 2 years imprisonment; and/or Criminal Fine Enforcement Act penalties.
10 U.S.C. § 2397(b)	Defense Acquisition Improvement Act	<p>You are within 2 years of the end of your DOD service.</p> <p>You performed specified procurement functions.</p> <p>You accepted payment from a DOD contractor with at least \$10,000,000 in contracts last year.</p>		Preponderance of evidence.	<p>\$250,000 civil fine for former DOD officials.</p> <p>\$500,000 civil fine for contractors.^{6/}</p> <p>Contractor pays \$100,000 liquidated damages or three times the amount of actual damages.</p>

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^{6/} Note that this statute applies both to former DOD employees and to the contractors who employed them in violation of the statute

TABLE D-3
ESPIONAGE OFFENSES SUMMARY MATRIX

Espionage offenses					
Provision or clause section	Title	Act	Intent	Standard of proof	Maximum penalty
18 U.S.C. § 793(d)	Communication of Classified Documents	You lawfully had information relating to the national defense. You transmitted the information to someone not entitled to receive it.	You did so willfully, you had reason to believe that the information could be used to the injury of the United States or to the advantage of any foreign nation.	Beyond a reasonable doubt.	\$10,000 fine and 10 years imprisonment; and/or Criminal Fine Enforcement Act penalties.
§ 793(f)(1)	Loss of Classified Documents	You permitted a document relating to the national defense to be removed, lost, stolen, abstracted or destroyed.	You did so through gross negligence.	Beyond a reasonable doubt.	\$10,000 fine and 10 years imprisonment; and/or Criminal Fine Enforcement Act penalties.
§ 793(f)(2)	Failure to Report Loss of Classified Documents	You failed promptly to report the loss, theft or destruction of a document relating to the national defense.	You knew that the document was illegally removed, lost, stolen or destroyed.	Beyond a reasonable doubt.	\$10,000 fine and 10 years imprisonment; and/or Criminal Fine Enforcement Act penalties.

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TABLE D-4
CONSPIRACY OFFENSES SUMMARY MATRIX

Conspiracy offenses					
Provision or clause section	Title	Act	Intent	Standard of proof	Maximum penalty
18 U.S.C. § 371	Conspiracy	You agreed with one or more other persons to commit any offense against the United States or to act in furtherance of a scheme or artifice to defraud the United States.	One conspirator took an overt act in furtherance of the conspiracy.	Beyond a reasonable doubt.	\$10,000 and 5 years imprisonment; and/or Criminal Fine Enforcement Act penalties.
18 U.S.C. §§ 1961 - 1968	Racketeer Influenced and Corrupt Organizations Act (RICO)	You were employed or associated with an enterprise which affected interstate or foreign commerce. You participated in the affairs of the enterprise through a pattern of racketeering activity, i.e., you committed two predicate crimes.	You did so knowingly and willfully.	Beyond a reasonable doubt.	\$25,000 fine, forfeiture and 20 years imprisonment; and/or Criminal Fine Enforcement Act penalties.

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TABLE D-5
SUPPLEMENTAL OFFENSES MATRIX

Supplemental offenses					
Provision or clause section	Title	Act	Intent	Standard of proof	Maximum penalty
18 U.S.C. Section 1905	The Trade Secrets Act	Government employee disclosed confidential information.	No willfulness or intent to profit required.	Beyond a reasonable doubt.	Removal from office; \$1,000 fine and 1 year.
10 U.S.C. Section 2408	Prohibition on Employment	You cannot employ, in a management of supervisory capacity, anyone convicted of a felony arising out of a DOD contract, for 5 years after their conviction.	Must knowingly employ such an individual.	Preponderance of the evidence for contractual penalties; beyond a reasonable doubt for criminal violations.	Prohibition on DOD contracting; \$500,000 fine.
* P.L. 100-690	Drug-Free Workplace Act	You must certify that you maintain a drug-free workplace.	Good faith effort to comply required.	Preponderance of the evidence.	Suspension of payments; contract termination; suspension and debarment
* P.L. 100-690	Obstruction of Auditors Act	You may not obstruct Government auditors in the performance of their duties.	No intent requirement.	Beyond a reasonable doubt.	5 years; \$250,000 fine for an individual; \$500,000 fine for a corporation.
* P.L. 100-700	Major Fraud Act of 1988	You may not knowingly defraud the Government in any procurement over \$1 million.	Knowingly commit fraud.	Beyond a reasonable doubt.	Up to 10 years and \$10 million in fines.
* P.L. 100-679	Procurement Policy Act Amendments of 1988	You may not knowingly promise employment to government employees nor obtain or use any procurement-sensitive information.	Knowing use of information.	Preponderance of the evidence for contractual penalties; beyond a reasonable doubt for criminal violations.	Suspension or debarment; other criminal penalties, including violations of Major Fraud Act; Program Fraud Act; Bribery Statute, etc.

Note: This is a supplemental list of recent statutes affecting contract compliance.

* U.S. Code sections have not yet been assigned to these laws.

APPENDIX E

VIDEO MATERIAL SOURCES FOR TRAINING

VIDEO MATERIAL SOURCES FOR TRAINING

Millicom
Suite 110
Two Neshaminy Interplex
Trevose, PA 19047-9905
Phone: (800) 541-1122

Title: *Doing Business with the Government: How to Avoid Fraud, Waste, and Abuse*

Price: \$45 for 2-day preview; \$190 for 7-day preview; \$495 for single-copy purchase; \$1,495 for license to duplicate and distribute video training tapes with the company.

Ethics Resource Center, Incorporated
1025 Connecticut Avenue, N.W.
Suite 1003
Washington, DC 20036
Phone: (202) 223-3411

Title: *Tough Decisions: Ethics Issues in Government Contracting*

Price: \$75 for preview; \$875 for single copy, with discounts available for multiple orders.

Title: *A Matter of Judgment: Conflicts of Interest in the Work Place*
It's Up to You: A Management Accountant's Decisions
Buyer Trouble: Ethics Issues in Purchasing

Price: \$35 for preview; \$500 for single copy, with discounts available for multiple orders.

Federal Publications, Inc.
1120 20th Street, N.W.
Washington, DC 20036
Phone: (202) 337-7000 (Norm Nelson)

Title: *Complying with Government Contract Requirements* (including separate tapes on an overview for all employees, an implementation guide for management, unallowable costs, contract pricing, time and labor charging, material management, quality and security)

Price: \$2,000 for eight tapes.

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FIELD	GROUP	SUB-GROUP		
19. ABSTRACT (Continue on reverse if necessary and identify by block number) <p>Note: This primer is designed to provide accurate and authoritative information on developing an ethics program. It is not intended to render professional advice nor does it represent the official policy of the Department of Defense.</p> <p>Some employees, managers, and company executives believe the short-term interests of their employer may justify questionable business practices. Acting out of misinformation, fear, a false sense of loyalty, or perhaps greed, they may be tempted to engage in dubious behavior. Questionable conduct can occur across a broad spectrum of daily employee activities – time charges, material use, inspection, pricing, and relationships with vendors and customers are examples. Work undertaken for the Government is especially open to such behavior because in addition to the basic ethics of our society, company staff members must comply with a vast number of complex laws, regulations, and rules. Understanding and staying current with these regulations and laws can be difficult, for some practices that were merely questionable yesterday may be illegal today.</p> <p>Self-initiated company ethics programs offer firms the opportunity to conduct their affairs in an ethical and legal manner, which aids in Government relations and projects a positive public image. Company ethics programs, in some cases, provide for the conduct of company-initiated investigations of suspected wrongdoing, often resulting in correction of management and control defects, and the possibility of more favorable treatment when Government contracting rules and regulations are violated. DoD regulations now recognize company ethics programs and self-enforcement as important adjuncts to Government enforcement.</p>				
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19. Abstract (continued)

To be effective, company ethics programs should consist of the following elements:

- A written code of business ethics and conduct to serve as the standard against which employees, supervisors, and executives are judged. The code should supplement and expand upon laws and regulations governing Government business, describe the expected ethical behavior of employees, and include a description of company sanctions that will be imposed for failure to adhere to the standards.
- A means of communicating and reinforcing the code to all company employees. The company communications plan should include mechanisms, such as hotlines or ombudsmen, through which the employees may report suspected wrongdoing without fear of retribution.
- A training program that explains the company's code to current employees, ensures that new employees are properly indoctrinated, and periodically retrain all employees in the company's standards.
- A monitoring procedure through which the company can assess the program to ensure that it is functioning properly. This monitoring may include use of outside audits, the imposition of internal controls, and internal auditing.

One other element has been added to many companies' ethics programs to effect self-governance:

- The adoption of procedures for voluntary disclosure of actions that violate procurement laws or regulations to the appropriate Government entity.

Voluntary disclosure procedures are the bridge between (1) the company's internal ethics program with its standards of conduct and systems of detection and sanction and (2) the Government's acceptance of company self-governance.

This primer describes the generally accepted elements of an ethics program. It can be used as a checklist for reviewing an existing ethics program or as a primer for initiating one. It focuses on developing and communicating company creeds and employee standards of conduct, establishing hotlines and designating ombudsmen, instituting training, establishing internal controls, and disclosing violations voluntarily. It is separated into three chapters. In Chapter 2 we present information on developing a company creed and employee standards of conduct, communicating and reinforcing the code and internally reporting violations, developing training programs, and developing an internal monitoring program. In our treatment of voluntary disclosure (Chapter 3), we define "voluntary"; discuss where, what, and when to disclose; and describe such relevant issues as employee and company rights.

Five appendices present detailed information. Appendix A presents prototype standards of conduct; Appendix B is an annotated reading list; Appendix C is a checklist of questions whose answers will help you assess your ethics program; Appendix D is a list of fraud offenses; and Appendix E is a listing of video material sources for ethics program training.